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 4TH DAY OF NOVEMBER 2025 / 13TH KARTHIKA, 1947

W.A.NO.2425 OF 2025

AGAINST THE JUDGMENT DATED 11.09.2025 IN W.P.(C) NO.22757 OF 2025 OF THE HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS IN W.P.(C):

1 SOUTH INDIAN BANK LTD.,
REPRESENTED BY ITS BRANCH MANAGER,
VALLIKAVU BRANCH, VALLIKAVU,
KARUNAGAPPALLY, KOLLAM, KERALA, PIN - 690546

2 THE AUTHORISED OFFICER,
REGIONAL OFFICE, THIRUVANANTHAPURAM,
3RD FLOOR, YWCA BUILDING, M.G. ROAD,
SPENCER JUNCTION, STATUE,
THIRUVANANTHAPURAM, PIN - 695001

BY ADVS.
SHRI.B.J.JOHN PRAKASH
SHRI.SOORAJ M.S.
SHRI.P.PRAMEL
SMT.VARSHA VIJAYAKUMAR NAIR
SHRI.MANU BABY
SMT.RAJASREE K.

RESPONDENTS/PETITIONERS IN W.P.(C):

1 RAHIM H K.,
AGED 48 YEARS
S/O HASSANKUNJU, RESIDING AT BLALIL
KIZHAKKETHARAYIL, CLAPPANA P.O., KARUNAGAPPALLY,
KOLLAM, KERALA, PIN - 690525

2 **SHEEBA M B.,**
AGED 42 YEARS
W/O RAHIM, RESIDING AT BLALIL KIZHAKKETHARAYIL,
CLAPPANA P.O., KARUNAGAPPALLY,
KOLLAM, KERALA, PIN - 690525

BY ADV. T.THASMI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04.11.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R"

JUDGMENT

Anil K. Narendran, J.

The appellants are the respondents in W.P.(C)No.22757 of 2025, which was one filed by the respondents herein-petitioners, invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the 1st respondent Bank (1st appellant herein) to consider and dispose of Ext.P4 request dated 12.06.2025 and to permit the petitioners to pay the entire amount in One Time Settlement (OTS) by waiving future and overdue interest and restrain the 2nd respondent Authorised Officer (2nd appellant herein) from proceeding under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), against the petitioners, till such time. The petitioners have also sought for a writ of certiorari to quash Ext.P3 notice dated 02.06.2025 issued by the Advocate Commissioner appointed by the Chief Judicial Magistrate Court, Kollam in M.C.No.831 of 2025, in a proceedings initiated by the Bank and its Authorised Officer under Section 14 of the SARFAESI Act. The said proceedings is in respect of a business loan for Rs.30

Lakhs availed from Vallikkavu Branch of South Indian Bank Ltd., on 20.11.2019, offering as security the property having an extent of 4.45 Ares comprised in Sy.No.1743B and 1744A, Re-Sy.No.337/5, Block No.2 of Clappana Village, Karunagappally Taluk.

2. On 20.06.2025, when W.P.(C)No.22757 of 2025 came up for consideration, the learned Single Judge passed an interim order, which reads thus;

> "To consider the prayers sought for in the writ petition seeking instalment facility and to defer the coercive steps against the petitioners, as an interim measure, there will be a direction to the petitioners to remit an amount of Rs.3,00,000/- within one month. It is made clear that, if the above payment is not made, the respondents will be at liberty to proceed further, in accordance with law."

3. The interim order dated 20.06.2025 of the learned Single Judge was under challenge in W.A.No.1778 of 2025 filed by the appellants herein. On 21.07.2025, when the said writ appeal came up for consideration, the learned counsel for the appellants raised the question of maintainability of W.P.(C)No.22757 of 2025, placing reliance on the decision of the Apex Court in **South Indian Bank Ltd. v. Naveen Mathew Philip [(2023) 17 SCC 311]**. The learned counsel also relied on the decision of the Apex Court

in **Bijnor Urban Cooperative Bank Ltd., Bijnor v. Meenal Agarwal [(2023) 2 SCC 805]**. The learned counsel pointed out that the request made by the 1st respondent herein in Ext.P4 for availing OTS facility has already been turned down by the Bank on 21.06.2025. By the judgment dated 21.07.2025, this Court disposed of W.A.No.1778 of 2025 by permitting the appellants to raise the question of maintainability of W.P.(C)No.22757 of 2025 before the learned Single Judge, as a preliminary issue. Paragraphs 7 to 9 and also the last paragraph of the judgment dated 21.07.2025 in W.A.No.1778 of 2025 read thus;

> "7. The writ petition is one filed seeking a writ of mandamus commanding the 1st appellant Bank to consider Ext.P4 request made by the 1st respondent herein for availing One Time Settlement facility, as sought for in that request. The said request has already been turned down by the 1st appellant Bank on 21.06.2025.
>
> 8. Now the writ petition stands listed before the learned Single Judge tomorrow (22.07.2025). It is for the appellants to raise the question of maintainability of the writ petition before the learned Single Judge relying on the decision of the Apex Court in **Naveen Mathew Philip [(2023) 17 SCC 311]**, **Bijnor Urban Cooperative Bank Ltd. [(2023) 2 SCC 805]**, etc.
>
> 9. We have no doubt that the learned Single Judge will deal with the maintainability of the writ petition, taking note of

the judgment of the Apex Court in the decisions referred to supra, before proceeding with the writ petition further on merits.

In such circumstances, we deem it appropriate to dispose of this writ appeal, after taking note of the law laid down by the Apex Court in the decisions referred to supra, by permitting the appellants to raise the question of maintainability of the writ petition before the learned Single Judge, as a preliminary issue, before proceeding with the writ petition further on merits."

4. On 26.07.2025, the respondents herein-petitioners filed I.A.No.2 of 2025 in W.P.(C)No.22757 of 2025, to accept Ext.P6 letter dated 21.06.2025 issued by the 2nd appellant Authorised Officer of the Bank, whereby Ext.P4 request dated 12.06.2025 made by the 1st petitioner to permit the petitioners to pay the entire amount availing OTS facility, by waiving future and overdue interest, stands rejected, for the reasons stated therein.

5. On 26.07.2025, along with I.A.No.3 of 2025, the appellants placed on record in W.P.(C)No.22757 of 2025, the judgment of the Division Bench dated 21.07.2025 in W.A.No.1778 of 2025, which was marked as Ext.R1 in that interlocutory application. In paragraph 4 of the affidavit dated 26.07.2025 filed in support of I.A.No.3 of 2025, the appellants have pointed out that aggrieved by the interim order dated 20.06.2025, they have

preferred W.A.No.1778 of 2025, which was disposed of by Ext.R1 judgment dated 21.07.2025, with a direction by the Division Bench to consider the question of maintainability of the writ petition. In paragraph 5 of the said affidavit, the appellants have pointed out that the writ petition is not maintainable in view of the law laid down by the Apex Court in **Bijnor Urban Cooperative Bank Ltd. [(2023) 2 SCC 805]**. In paragraph 6 of the said affidavit, the appellants have pointed out that the <u>writ petition has become infructuous</u> as the proposal made in Ext.P4 for OTS has been duly considered on merits and rejected by Ext.P6 letter dated 21.06.2025. Paragraph 6 of the affidavit dated 26.07.2025 filed in support of I.A.No.3 of 2025 in W.P.(C)No.22757 of 2025 reads thus;

> "6. It is respectfully submitted that even otherwise, the above writ petition has become infructuous <u>as Ext.P4 OTS proposal has been duly considered on merits and rejected vide Ext.P6</u>. Nothing further survives in the writ petition."
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> (underline supplied)

6. On 11.09.2025, when W.P.(C)No.22757 of 2025 came up for consideration, the learned Single Judge disposed of the same with the directions contained in paragraph 4 of the

judgment. The judgment dated 11.09.2025 of the learned Single Judge reads thus;

> "The petitioners, defaulted borrowers from the respondent bank, are challenging proceedings under the SARFAESI Act initiated by the respondent Bank for recovery of the amounts due.
>
> 2. During the hearing, the petitioners confined the relief to an opportunity to repay the overdue amount in instalments and to obtain regularisation of the loan accounts.
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> 3. It was submitted on behalf of the respondent Bank that the petitioners committed default in repayment of the housing loan, and the total overdue amount as on 11.09.2025 is Rs.8,55,004/-. 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 accounts. This is recorded.
>
> 4. Given the above, the petitioners can be granted an opportunity to repay the total overdue amount on the following conditions, and if they are met, to have the loan accounts regularised.
>
> 1. The petitioners shall pay a sum of Rs.1,00,000/- (Rupees one lakh only) on or before 10.10.2025.
>
> 2. The balance overdue, along with any accrued interest, costs, and charges, if any, shall be paid in 12 equal monthly instalments starting from 10th November 2025, and subsequent instalments shall be paid on or before the 10th day of every succeeding month.

3. Petitioners shall continue to pay the regular EMIs/ instalments along with the instalments directed above.

4. In the event of default of any one instalment, the respondent Bank shall be entitled to proceed in accordance with the law;

5. All coercive proceedings shall be kept in abeyance to enable the petitioners to repay the entire amount directed above.

6. The judgment will not prevent the petitioners from approaching the bank seeking OTS facility, which will be considered by them in accordance with law.

The writ petition is disposed of as above."

7. Challenging the judgment dated 11.09.2025 of the learned Single Judge in W.P.(C)No.22757 of 2025, the appellants-respondents are before this Court in this writ appeal, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958. In this writ appeal it is contended that the impugned judgment of the learned Single Judge is contrary to the law laid down by the Apex Court and this Court in a catena of decisions, including the decisions in **Phoenix ARC Pvt. Ltd. v. Vishwa Bharati Vidya Mandir [(2022) 5 SCC 345]**; **State Bank of India v. Arvindra Electronics [(2023) 1 SCC 540]**; **Varimadugu OBI Reddy v. B. Sreenivasulu [(2023) 2 SCC 168]**; **Authorised Officer, State Bank of India v. C. Natarajan [(2024) 2 SCC 637]**;

Vinu Thomas v. South Indian Bank Ltd. [2023 (1) KLT 647]; **K. Sreedhar v. M/s. Raus Construction Pvt. Ltd. [(2023) 11 SCC 169]**; and **S. Shobha v. Muthoot Finance Ltd. [2025 SCC OnLine SC 177 : 2025 (2) KHC 229]**. Further, by the impugned judgment, the learned Single Judge granted the reliefs, which were not sought for in W.P.(C)No.22757 of 2025. The interference by the said judgment has resulted in the delay of the legal measures taken by the Bank for the recovery of the amount due from the respondents herein.

8. On 13.10.2025, when this writ appeal came up for admission, the learned counsel for the respondents-petitioners sought an adjournment on the ground that the respondents are proposing to clear the entire dues within a period of one week. After recording the said submission, this writ appeal was ordered to be listed today for further consideration.

9. Heard the learned counsel for the appellants-respondents and also the learned counsel for the respondents-petitioners.

10. During the course of arguments, the learned counsel for the respondents-petitioners would submit that, though it was submitted before this Court on 04.11.2025 that the respondents

are proposing to clear the entire dues within a period of one week, they could not make any payment till date.

11. The learned counsel for the appellants-respondents would contend that despite the permission granted by the Division Bench in the judgment dated 21.07.2025 in W.A.No.1778 of 2025, whereby the appellants were permitted to raise the question of maintainability of W.P.(C)No.22757 of 2025 as a preliminary issue, the learned Single Judge disposed of the writ petition without deciding the question of maintainability. A copy of the judgment of the Division Bench was placed before the learned Single Judge, as Ext.R1, along with I.A.No.3 of 2025. In paragraph 6 of the affidavit dated 26.07.2025 filed in support of I.A.No.3 of 2025, the appellants have pointed out that W.P.(C)No.22757 of 2025 has become infructuous as the proposal made in Ext.P4 for OTS facility has been duly considered on merits and rejected by Ext.P6 letter dated 21.06.2025. Without considering the said contentions, the learned Single Judge disposed of the writ petition, by the impugned judgment dated 11.09.2025, granting installment facility to the respondents-petitioners to pay the overdue amount as on 11.09.2025, amounting to Rs.8,55,004/-, by paying a sum of Rs.1,00,000/- on or before 10.10.2025, and the balance

amount in twelve equal monthly installments commencing from 10.11.2025 and the subsequent installments payable on or before the 10th day of every succeeding month, along with the regular monthly installments. All coercive steps under the provisions of the SARFAESI Act are directed to be kept in abeyance, so as to enable the petitioners to repay the entire amount, as directed above. Despite the rejection of Ext.P4 request for OTS facility, vide Ext.P6 letter dated 21.06.2025, the learned Single Judge observed that the impugned judgment dated 11.09.2025 will not prevent the petitioners from approaching the Bank seeking OTS facility, which will be considered in accordance with law. By Ext.P6 letter dated 21.06.2025, the request made by the petitioners for OTS facility stands rejected, for the reasons stated therein. Ext.P6 was not under challenge in W.P.(C)No.22757 of 2025. The learned Single Judge committed a grave error in disposing of the writ petition, without considering the legal contentions raised by the appellants, relying on the decisions of the Apex Court in **Naveen Mathew Philip [(2023) 17 SCC 311]**, **Bijnor Urban Cooperative Bank Ltd. [(2023) 2 SCC 805]**, **Sobha S. [2025 SCC OnLine SC 177]**, etc.

12. The learned counsel for the respondents-petitioners would contend that the indulgence shown by the learned Single Judge permitting the petitioners to pay the overdue amount in monthly installments, along with the regular installments, and directing the appellants to regularise the loan accounts warrants no interference in this intra-court appeal filed under Section 5(i) of the Kerala High Court Act, 1958. Due to financial stringency, there occurred a default in paying the monthly installments of the business loan availed from the 1st appellant Bank in the year 2019. Therefore, the learned Single Judge cannot be faulted for granting an opportunity to the petitioners to pay the overdue amount in monthly installments.

13. In **South Indian Bank Ltd. v. 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 <u>the process does not conform to the law or the statute</u>. 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, <u>it is expected to go into the issues of fact and law, including a statutory violation</u>. 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 <u>to set aside an illegal order, and thereafter, grant consequential reliefs,</u>

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. One of the reliefs sought for in W.P.(C)No.22757 of 2025 was a writ of certiorari to quash Ext.P3 notice dated 02.06.2025 issued by the Advocate Commissioner appointed by the Chief Judicial Magistrate Court, Kollam in M.C.No.831 of 2025, in a proceedings initiated by the Bank under Section 14 of the SARFAESI Act.

16. Section 14 of the SARFAESI Act deals with the powers of the Chief Metropolitan Magistrate or the District Magistrate to assist a secured creditor in taking possession of a secured asset.

17. In **Indian Bank v. D. Visalakshi [(2019) 20 SCC 47]**, a Two-Judge Bench of the Apex Court considered the question as to whether 'the Chief Judicial Magistrate' is competent to deal with the request of the secured creditor to take possession of the secured asset under Section 14 of the SARFAESI Act as can be done by the Chief Metropolitan Magistrate in metropolitan areas and the District Magistrate in non-metropolitan areas. The Apex Court noted that the Chief Judicial Magistrate is equated with the Chief Metropolitan Magistrate for the purposes referred to in the Criminal Procedure Code, 1973, and those expressions are used interchangeably, being synonymous with each other. Approving the view taken by this Court in **Muhammed Ashraf v. Union of India [2008 (3) KHC 935]** and **Radhakrishnan V.N. v. State of Kerala [2008 (4) KHC 989]**, by the Karnataka High Court in **Kaveri Marketing v. Saraswathi Cooperative Bank Ltd. [2013 SCC OnLine Kar 18]**, by the Allahabad High Court in **Abhishek Mishra v. State of U.P. [AIR 2016 All 210]** and by the High Court of Andhra Pradesh in **T.R. Jewellery v. State**

Bank of India [AIR 2016 Hyd 125], the Apex Court held that the Chief Judicial Magistrate is equally competent to deal with the application moved by the secured creditor under Section 14 of the SARFAESI Act.

18. In **United Bank of India v. Satyawati Tondon [(2010) 8 SCC 110]**, a Two-Judge Bench of the Apex Court held that if the 1st respondent guarantor had any tangible grievance against the notice issued under Section 13(4) of the SARFAESI Act or the action taken under Section 14, then he could have availed remedy by filing an application under Section 17(1) before the Debts Recovery Tribunal. The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

19. In **Satyawati Tondon [(2010) 8 SCC 110]**, on the facts of the case at hand, the Apex Court noted that the High Court

overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that <u>this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions</u>. While dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are <u>a code unto themselves</u>, inasmuch as, they not only contain comprehensive procedure for recovery of the dues but also envisage <u>constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person</u>. Therefore, in all such cases, the High Court must insist that before availing the remedy under Article 226 of the Constitution, <u>a person must exhaust the remedies available under the relevant statute</u>.

20. In view of the law laid down by the Apex Court in **Satyawati Tondon [(2010) 8 SCC 110]** and reiterated in **Naveen Mathew Philip [(2023) 17 SCC 311]**, if the respondents-petitioners had any grievance against the proceedings initiated by the secured creditor under Section 14 of

the SARFAESI Act, they could have availed the statutory remedy by filing an application under Section 17 of the said Act before the Debts Recovery Tribunal, as the expression 'any person' used in Section 17(1) of the Act is of wide import, which takes within its fall, not only the borrower but also the guarantor or any other person, who may be affected by the action taken under Section 13(4) or Section 14 of the said Act. When the remedies available to an aggrieved person under Section 17 of the SARFAESI Act are both expeditious and effective, as held by the Apex Court in **Satyawati Tondon [(2010) 8 SCC 110]**, the borrower, the guarantor or any other person who may be affected by the action taken by the secured creditor under Section 14 of the SARFAESI Act have to approach the Debts Recovery Tribunal availing the statutory remedy provided under Section 17 of the said Act, instead of invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India. Therefore, the respondents-petitioners cannot invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P3 notice dated 02.06.2025 issued by the Advocate Commissioner appointed by the Chief Judicial Magistrate Court, Kollam in M.C.No.831 of 2025, in a proceedings initiated by the Bank under Section 14 of the SARFAESI Act.

21. The main relief sought for in W.P.(C)No.22757 of 2025 was a writ of mandamus commanding the 1st respondent Bank (1st appellant herein) to consider and dispose of Ext.P4 request dated 12.06.2025 and to permit the petitioners to pay the entire amount in OTS by waiving future and overdue interest and restrain the 2nd respondent Authorised Officer (2nd appellant herein) from proceeding under the provisions of the SARFAESI Act, against the petitioners, till such time.

22. In **State Bank of India v. Arvindra Electronics Pvt. Ltd. [(2023) 1 SCC 540]** - judgment dated 04.11.2022 in Civil Appeal No.6954 of 2022 - the Apex Court reiterated the law laid down in **Bijnor Urban Cooperative Bank Limited [(2023) 2 SCC 805]** - judgment dated 15.12.2021 in Civil Appeal No.7411 of 2021 - that no writ of mandamus can be issued by the High Court in exercise of the powers under Article 226 of the Constitution of India directing a financial institution/bank to positively grant the benefit of One Time Settlement (OTS) to a borrower; the grant of benefit under OTS is always subject to eligibility criteria mentioned under OTS scheme and guidelines

issued from time to time. Such a decision should be left to the commercial wisdom of the bank, whose amount is involved, and it is always to be presumed that a financial institution/bank shall take a prudent decision whether to grant a benefit or not under the OTS scheme. Therefore, the High Court materially erred and exceeded in its jurisdiction in issuing a writ of mandamus directing the bank to positively consider/grant the benefit of OTS to the borrower.

23. In **Arvindra Electronics Pvt. Ltd. [(2023) 1 SCC 540]**, the Apex Court held that directing the bank to reschedule the payment under OTS would tantamount to modification of the contract, which can be done by mutual consent under Section 62 of the Contract Act, 1872. Further, rescheduling the payment under OTS and granting extension of time would tantamount to rewriting the contract, which is not permissible while exercising the powers under Article 226 of the Constitution of India.

24. In the instant case, OTS proposal made by the respondents-petitioners in Ext.P4 request, for an amount of Rs.21.92 lakhs, was considered by the Bank, which was rejected by Ext.P6 letter dated 21.06.2025. A reading of Ext.P6 letter would show that, after an evaluation of the offer made in Ext.P4 request,

the Bank found that the said offer <u>falls significantly short of the acceptable recovery norms</u> and <u>fails to meet the Bank's internal policy parameters</u>, including the Net Present Value (NPV) of the securities, adequacy of coverage, and regulatory compliance requirements. There is no definitive timeline for the remittance of the proposed settlement amount in the OTS proposal, which does not demonstrate a firm intent or capability for resolution. Therefore, the Bank, vide Ext.P6 letter dated 21.06.2025, informed the 1st respondent herein that the OTS proposal is not acceptable to the Bank. In Ext.P6 letter, which was issued by the Bank without prejudice to its rights and remedies available under the provisions of the law for recovery of the amount due and payable by the respondents herein, it was pointed out that a substantial sum of public money, being Rs.29,68,005.81, as on 20.06.2025, with further interest and costs, is outstanding in the loan account in question. In paragraph 6 of the affidavit dated 26.07.2025 filed in support of I.A.No.3 of 2025 in W.P.(C)No. 22757 of 2025, the appellants have pointed out that the <u>writ petition has become infructuous</u> as the proposal made in Ext.P4 for OTS has been duly considered on merits and rejected by Ext.P6 letter dated 21.06.2025.

25. When the reliefs sought for in W.P.(C)No.22757 of 2025 to consider Ext.P4 request dated 12.06.2025 made by the respondents-petitioners to permit them to pay the entire amount in OTS stands rejected by Ext.P6 letter dated 21.06.2025 of the Bank, on the grounds stated therein that the offer falls significantly short of the acceptable recovery norms and fails to meet the Bank's internal policy parameters, including the Net Present Value of the securities, adequacy of coverage, and regulatory compliance requirements and that there is no definitive timeline for the remittance of the proposed settlement amount in the OTS proposal, which does not demonstrate a firm intent or capability for resolution, the learned Single Judge committed a grave error in disposing of W.P.(C)No.22757 of 2025, by permitting the petitioners to pay the overdue amount as on 11.09.2025 amounting to Rs.8,55,004/-, by paying a sum of Rs.1,00,000/- on or before 10.10.2025 and the balance overdue in 12 equal monthly installments starting from 10.11.2025 and the subsequent installments on or before the 10^{th} day of every succeeding month, along with the regular monthly installments. The total dues at the time of rejection of the request for OTS come to Rs.29,68,005.81, as stated in ExtP6 letter dated 21.06.2025

issued by the Bank, whereby the request for OTS stands rejected. By granting such installment facility to the petitioner to pay the overdue amount in 13 (1+12) monthly installments, along with regular monthly installments, the learned Single Judge interfered with the proceedings initiated by the Bank under the provisions of the SARFAESI Act, including the proceedings pursuant to the order of the Chief Judicial Magistrate Court, Kollam, under the provisions of Section 14 of the SARFAESI Act. As held by the Apex Court in **Satyawati Tondon [(2010) 8 SCC 110]**, the remedy available to the petitioners, if they have any grievance against the action taken by the secured creditor under Section 14 of the SARFAESI Act, is to approach the Debts Recovery Tribunal by filing an application under Section 17 of the said Act. By permitting the petitioners to pay the overdue amount in 13 (1+12) monthly installments, along with regular monthly installments, the learned Single Judge virtually issued a writ of mandamus commanding the Bank to regularise the loan accounts.

26. The specific contention of the appellant Bank is that the learned Single Judge disposed of W.P.(C)No.22757 of 2025, without deciding the question of maintainability raised by the Bank placing reliance on the decision of the Apex Court in **Naveen**

Mathew Philip [(2023) 17 SCC 311] and **Bijnor Urban Cooperative Bank Limited [(2023) 2 SCC 805]**, despite the Bank producing a copy of the judgment of the Division Bench dated 21.07.2025 in W.A.No.1778 of 2025, as Ext.R1, along with I.A.No.3 of 2025 in W.P.(C)No.22757 of 2025.

27. In such circumstances, we find absolutely no grounds to sustain the judgment dated 11.09.2025 of the learned Single Judge in W.P.(C)No.22757 of 2025.

In the result, this writ appeal is allowed by setting aside the judgment dated 11.09.2025 in W.P.(C)No.22757 of 2025 and the said writ petition is dismissed; however without prejudice to the right of the respondents-petitioners to avail the statutory remedy provided under Section 17 of the SARFAESI Act, in case they have a grievance against the action taken by the Bank under Section 14 of the said Act, and their right to challenge the rejection of the request for OTS, before the appropriate forum, on any legally tenable grounds.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE

MSA