

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.**

Monday, the 15th day of September 2025 / 24th Bhadra, 1947

WP(C) NO. 26067 OF 2025

PETITIONERS:

1. M/S. GRIDS ENGINEERS AND CONTRACTORS, MMC/IX/456/A7, ATHIRA COMPLEX, MUDAVOOR P.O., MUVATTUPUZHA, ERNAKULAM, REPRESENTED BY ITS MANAGING PARTNER SHINE V. RAJ., PIN-686669
2. SHINE V. RAJ, AGED 46 YEARS, S/O. V.A. RAJAN, MANAGING PARTNER, M/S. GRIDS ENGINEERS AND CONTRACTORS, MMC/IX/456/A7, ATHIRA COMPLEX, MUDAVOOR P.O., MUVATTUPUZHA, ERNAKULAM RESIDING AT VARAMBATHUKUDIYIL HOUSE, VELLOORKUNNAM P.O., MUDAVOOR, MUVATTUPUZHA, ERNAKULAM, PIN-686669

RESPONDENTS:

1. UNION BANK OF INDIA, REGIONAL OFFICE KOTTAYAM, 3RD FLOOR, AMALA TOWERS, ADICHIRA JUNCTION, KOTTAYAM, REPRESENTED BY ITS CHIEF MANAGER AND AUTHORIZED OFFICER, PIN-686630
2. THE BRANCH MANAGER, UNION BANK OF INDIA (E-ANDHRA BANK) , THODUPUZHA BRANCH, 1ST FLOOR, VELLARINGAT TOWERS, BY PASS JUNCTION, THODUPUZHA, IDUKKI DISTRICT, PIN-685584

Writ Petition (Civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay all further proceedings pursuant to Exhibit P16 (the order dated 21-06-2025 in cmp no.2430/2025 in m.c. no.797/2022 on the files of the Additional Chief Judicial Magistrate Court, Ernakulam (special court for trial of criminal cases against mps/mlas.) pending final disposal of the above writ petition, for the ends of justice.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of PARTY & M/S.THAJUDDEEN E B, ARTHUR B. GEORGE, P.A.MOHAMMED ASLAM, RAMSHAD K.R., MUHAMMED RISWAN K.A., MIDHUN MOHAN, FIDIL V. JOHN, KIRAN NARAYANAN, Advocates for the petitioners, M/S ASP.KURUP, SADCHITH.P.KURUP, C.P.ANIL RAJ, SIVA SURESH, B.SREEDEVI, ATHIRA VIJAYAN, Advocates for the respondents, the court passed the following:

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MOHAMMED NIAS C.P., J.

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Dated this the 15th day of September, 2025

REFERENCE ORDER

The above writ petition is filed challenging Ext.P16 order passed by the Additional Chief Judicial Magistrate Court, Ernakulam (Special Court for trial of Criminal cases against sitting and former MPs/MLAs of the state) dated 21.06.2025 in CMP No.2430 of 2025 in MC No.797 of 2022, under S.14 of the SARFAESI Act, as without jurisdiction.

2. When the writ petition came up for admission, the following interim order was passed on 18.07.2025;

“The respondent Bank is directed to file a counter meeting the allegations in the writ petition. There will be an interim stay as prayed for, for a period of one month. Post on 18.08.2025”

3. Challenging the said interim order, the bank filed W.A.No.1802 of 2025, wherein the division bench set aside the interim order on the

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ground that the ad interim order was not supported by reasons, as follows:

“In the result, this writ appeal is disposed of, by setting aside the interim order dated 18.07.2025 of the learned Single Judge in W.P.(C)No.26067 of 2025 on the sole ground that it is not supported by reasons. Such an order cannot be sustained in view of the law laid down by the Apex Court in the decisions referred to supra. It is made clear that this judgment will not stand in the way of the learned Single Judge considering the interim relief sought for in W.P.(C)No.26067 of 2025 afresh, after considering the legal and factual contentions raised by both sides, including the question of maintainability. So as to enable the respondents-petitioners to bring up the writ petition before the learned Single Judge, status quo as on today, in respect of the secured assets, shall be maintained for a period of two days.”

4. The writ petition thereafter was considered, and the following interim order was passed on 18.08.2025;

“The pleadings in the writ petition show that the figure stated by the bank as due from the petitioners, when disposing of W.P(C) No. 18034/2024 on 24.06.2024, was Rs. 85 lakhs. The said figure was sought to be varied at the instance of the bank by filing an R.P., after the writ petitioners had allegedly paid the entire

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amount mentioned earlier. Orders were passed in R.P. 157/2025 on 18.03.2025, wherein the bank raised a contention that as of 20.05.2024, the outstanding amount would be Rs. 1,29,03,944/-. Even then, the petitioners had objected to the figure suggested by the bank. The judgment in R.P. No. 157 of 2025 dated 18.03.2025 reads as follows;

“The Standing Counsel submits that what was submitted by the Standing Counsel is incorrect and the actual amount is Rs.1,29,03,944/-. Since it is an error on the part of the Counsel, I am of the view that the said amount can be corrected. But it is made clear that this will not be treated as an amount admitted by the petitioners or computed by this Court. The actual amount will be as adjudicated by the appropriate Tribunal. The Review Petition is, therefore, allowed to the extent of substituting the figure Rs.1,10,00,000/- appearing in paragraph 7 of the judgment as Rs.1,29,03,944/-. The figure Rs.85,00,000/- shown in paragraph 11(i) shall also stand substituted as Rs.1,04,03,944/-.”

2. It is submitted by both sides that the matter is pending consideration before the tribunal, and the amount, if any, due from the petitioners or payable by

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the bank in the counterclaim, has not been quantified.

3. That apart, the petitioners contend that the first application preferred by the bank under S.14 of the SARFAESI Act was dismissed, and later the same was allowed without citing any reason.

4. The judgments cited on behalf of the bank are of no help to them in a case where the amount payable by the petitioners has not yet been decided by the Tribunal, as directed by this Court. In the nature of the disputes raised in this writ petition, the statutory actions of the bank can certainly be called in question in a writ petition under Article 226 of the Constitution of India, and no judgment forecloses that. The argument/ understanding that a writ petition is not maintainable is certainly flawed.

5. Given the above, I am inclined to entertain this writ petition. The parties are directed to complete the pleadings. Meanwhile, there will be an interim stay as prayed for, pending the writ petition.

Post on 18.09.2025.”

5. This interim order was also challenged by the bank by filing W.A.No.2076/2025, in which the interim order was set aside, holding that the order did not take into consideration ***the issue of***

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maintainability in its proper perspective, and also the details of the judgments relied on by the bank and as to why they are not applicable are not stated.

6. It is elementary that the writ petitions cannot be dismissed as not maintainable, but jurisdiction can be declined by not entertaining the same. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself, like the bar to interference by Courts mentioned in the Constitution. Article 226, being part of the basic structure, cannot be diluted or ousted by ordinary legislation. Any attempt to curtail this jurisdiction, absent a constitutional mandate, amounts to a distortion of the constitutional scheme. The doctrine of self-imposed restraint may guide the exercise of discretion, but it cannot be converted into a fetter upon the power itself. To do so would, in effect, amount to judicial abdication of constitutional authority. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs, which turns on entertainability and not maintainability.

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7. In M/s. Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and Others (2023 SCC Online SC 95), which was relied on in WA No.1143 of 2024, it is held as follows:

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as “not maintainable” merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded Articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Court (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of

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power under Article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition “not maintainable”. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that “entertainability” and “maintainability” of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to “maintainability” goes to the root of the matter and if such objections were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of discretion of the High Courts, writ remedy being discretionary.”

8. Furthermore, the very same question arose regarding the maintainability of Writ Appeals under Section 5 of the Kerala High

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Court Act, 1958, specifically in instances where the Single Judge had deemed the writ petition to be maintainable. A Division Bench addressed this issue in the case of *The Inspector General of Police v. M.V. Raghavan & Ors.* [2007 SCC Online Ker 163], which concluded that such Writ Appeals were indeed not maintainable, relying upon the authoritative interpretation of the Larger Bench of five judges in **K.S. Das v. State of Kerala (1992 SCC Online Ker 530)** that clarified the scope and implications of Section 5 of the Kerala High Court Act with eloquence and precision.

9. The judgment in *K.S. Das* (supra) has been referred to and relied upon by the Division Benches of this Court in the following cases:

P.T. Thomas v. Bijo Thomas (2021 SCC OnLine Ker 16455), *Arakkanattil Oommen Iype v. Rajamma Joseph* (W.A. No 1034/2022 judgment dated 10.08.2022), *Mohammad Ali P. Board of Directors* (W.A. No. 149/2022 judgment dated 7.02.2022).

10. Before that, Chief Justice M.S.Menon in *Neelakanta Kartha v. Registrar, Kerala Agrl.University* (1977 SCC Online Ker 36) held as follows:

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“6. We cannot certainly rule out what the learned Judge has stated as an unreasonable, much. The less an impossible, view. The view appears to us to be certainly a plausible one, and is supported by the dictionary meaning of the term ‘pursuance’ which the learned Judge has extracted. In cases and situations where the learned Judge has thumbed in favour of one of two plausible interpretations, it is a golden rule not to interfere in proceedings under Article 226. The learned Judge having dealt with the matter under Article 226 and taken a view which is certainly plausible, we do not think we would be justified in interfering. We dismiss the appeal with no order as to costs.”

11. Chief Justice Gopalan Nambiar in ***Rajalekshmi Motor Service, Kozhikode v. Govt. Of Kerala and others*** (1959 SCC Online Ker 118) held as follows:

“18. Iyengar, J., did not consider these factors as sufficient to decline interference, and in such a case whatever may have been our own reactions in similar circumstances we should not interfere unless we are satisfied that the decision is perverse. It is not contended that such is the case. The last contention of the appellant relates to the nature of the remedy sought by the petitioner. According to the appellant when an order is totally void certiorari is not the remedy and the petition should have been dismissed on that ground. The power under Article 226 of the Constitution, is not trammelled by the procedural

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niceties of English law. As stated in *Ananthanarayanan v. General Manager, Southern Rly. P. T. Madras*, (S) AIR 1956 Mad 220;

Article 226 of the Constitution empowers the High Courts to issue 'directions, orders' or writs including 'writs in the nature of habeas corpus, mandamus, etc. It will not do to ignore the significance of the words underlined (here into ' '). The circumstance, therefore, that the petitioner has applied for a particular form of writ whereas he should have asked for a different kind of writ or order does not preclude the Court from moulding the remedy to the circumstances of the case."

12. All these judgments were overlooked by the Division Bench while passing orders in W.A.No.2076/2025, virtually directing the Single Judge to give additional justifications. The Single Judge, having found that the writ petition is to be entertained for the reasons set out in the order, and if the Division Bench was not convinced of the same, it could have exercised the powers under Section 5 of the Kerala High Court Act, based on the principles laid down in the judgments mentioned above, including the decision of the Larger Bench.

13. It is rudimentary that the writ petition could not have been dismissed as not maintainable; and therefore, the back-to-back

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directions to consider the maintainability amount to virtually directing the single judge to decide until the result is acceptable to the Division Bench. The said direction is destructive of judicial comity and contrary to the very structure of intra-court appeals. The Division Bench, therefore, has traveled far beyond the legitimate bounds of intra-court appellate scrutiny, totally contrary to the Larger Bench decision of this Court and against the Division Bench judgments that directly dealt with the very same issue.

14. The *raison d'être* of law and of courts is to secure finality in disputes by reducing the multiplicity of proceedings, a cause which leads to a proliferation of litigations, strikes at the heart of that principle.

15. In the case of ***Shabna Abdulla v. Union of India and Others*** [(2024) 6 SCC 221], the Supreme Court dealt with a judgment rendered by a Division Bench of this Court, ignoring an earlier coordinate bench judgment, the Apex Court held as follows:

“11. After observing the aforesaid, the Coordinate Division Bench of the same High Court held that non-supply of the documents had vitally affected the right of the detenus to

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make an effective representation and the detention order came to be quashed on the said ground.

12. In the present case also, the detenue had sought the copies of the said WhatsApp chats. However, the Division Bench of the High Court in the present case, while rejecting the case of the detenue, observed that the detaining authority had arrived at a subjective satisfaction on the basis of various documents and that non-supply of the WhatsApp chats would not vitiate the detention order. It, therefore, held that the findings of the Coordinate Bench of the same High Court in the cases of Nushath Koyamu (supra) and other connected matters in respect of other detenus could not be followed in the present case.”

13. We may gainfully refer to the following observations of this Court in the case of Official Liquidator vs. Dayanand and Others, (2008) 10 SCC 1:

"90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last

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six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. We may add that in our constitutional set-up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

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17. We are of the considered opinion that the Division Bench of the High Court while passing the impugned judgment and order should have followed the view taken by another Division Bench of the same High Court specifically when the grounds of detention and the grounds of challenge were identical in both the cases. In the event, the Division Bench of the High Court was of the view that the earlier decision of the Coordinate Bench of the same High Court was not correct in law, the only

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option available to it was to refer the matter to a larger Bench.”

16. In view of the above principles of law, the directions issued by the division bench in W.A. No.2076 of 2025, dated 09-09-2025, are clearly against all binding judgments of this Court, including the Larger Bench. Since this issue has arisen on more than one occasion in the appeals filed against the interim orders in the instant writ petition itself at different stages, and is arising frequently, I feel that the scope of an intra-court appeal under S.5 of the Kerala High Court Act, in particular, against the interim orders passed by the Single Judge, calls for consideration by a Larger Bench of this Court.

The Registry is directed to place this writ petition before the Honourable Chief Justice for appropriate orders.

SD/-
MOHAMMED NIAS C.P.
JUDGE

JJ

APPENDIX OF WP(C) 26067/2025

Exhibit P1	A TRUE COPY OF THE NOTICE SENT BY THE 1ST RESPONDENT DATED 19-08-2021
Exhibit P2	A TRUE COPY OF THE REPLY SENT BY THE 1ST PETITIONER TO THE RESPONDENTS DATED 27-12-2021
Exhibit P3	A TRUE COPY OF THE COMMUNICATION SENT BY THE 1ST RESPONDENT TO THE PETITIONERS DATED 10-01-2022
Exhibit P4	A TRUE COPY OF THE ADDITIONAL REPLY DATED 21-01-2022 OF THE PETITIONERS TO THE 1ST RESPONDENT
Exhibit P5	A TRUE COPY OF THE POSSESSION NOTICE ISSUED BY THE 1ST RESPONDENT AS AGAINST THE 2ND PETITIONER'S PROPERTY DATED 20-05-2022
Exhibit P6	A TRUE COPY OF THE POSSESSION NOTICE ISSUED BY THE 1ST RESPONDENT AS AGAINST THE 2ND PETITIONER'S FATHER'S PROPERTY DATED 20-05-2022
Exhibit P7	A TRUE COPY OF THE NOTICE SENT BY THE 1ST PETITIONER TO THE 1ST RESPONDENT DATED 21-05-2022
Exhibit P8	A TRUE COPY OF THE COMMUNICATIONS DATED 19-07-2022 SEND BY THE 1ST PETITIONER TO THE 1ST RESPONDENT
Exhibit P9	A TRUE COPY OF THE AUCTION NOTICE DATED 18-07-2022 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONERS
Exhibit P10	A TRUE COPY OF THE NOTICE DATED 18-04-2024 ISSUED BY THE ADVOCATE COMMISSIONER
Exhibit P11	A TRUE COPY OF THE JUDGMENT IN W.P. (C) NO. 18030/2024 DATED 24-06-2024 OF THE HIGH COURT OF KERALA
Exhibit P12	A TRUE COPY OF THE ORDER DATED 18-03-2025 IN R.P.NO.157/2025 BY THE HIGH COURT OF KERALA
Exhibit P13	A TRUE COPY OF THE ORDER DATED 19-04-2025 OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM (SPECIAL COURT FOR TRIAL OF CRIMINAL CASES AGAINST MPS/MLAS.) IN M.C. NO.797/2022
Exhibit P14	A TRUE COPY OF THE MEMORANDUM OF ADDITIONAL WRITTEN STATEMENT WITH COUNTER CLAIM SUBMITTED BY THE PETITIONERS HEREIN AS DEFENDANTS IN O.A. NO.82/2022 DATED 13-05-2025 ON THE FILES OF DEBT RECOVERY TRIBUNAL – II, ERNAKULAM
Exhibit P15	A TRUE COPY OF THE APPLICATION FILED FOR RESTORATION AS CMP NO.2430/2025 IN M.C. NO.797/2022 BY THE 1ST RESPONDENT ON THE FILES OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM (SPECIAL COURT FOR TRIAL OF CRIMINAL CASES AGAINST MPS/MLAS.) DATED 10-06-2025
Exhibit P16	A TRUE COPY OF THE ORDER DATED 21-06-2025 IN CMP NO.2430/2025 IN M.C. NO.797/2022 ON THE FILES OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM (SPECIAL COURT FOR TRIAL OF CRIMINAL CASES AGAINST MPS/MLAS.)
Annexure A1	TRUE COPY OF THE MEMORANDUM OF WRIT APPEAL NO. 1802 OF 2025 DATED 21.07.2025
Annexure A2	A TRUE COPY OF INTERIM ORDER DATED 23.07.2025 IN W.A. NO. 1802 OF 2025
Exhibit R1A	A true copy of this decision in Union Bank of India v. Manaf (2025 KLT Online 1816]