



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

WEDNESDAY, THE 7TH DAY OF JANUARY 2026 / 17TH POUSHA, 1947

WA NO. 2323 OF 2025

AGAINST THE JUDGMENT DATED 14.08.2024 IN WP(C) NO.21833 OF
2024 OF HIGH COURT OF KERALA

APPELLANT(S) / 4TH RESPONDENT:

THE AUTHORIZED OFFICER AND CHIEF MANAGER
KERALA GRAMIN BANK, REGIONAL OFFICE,
DEVAN'S TOWER, KARAPPARAMBU,
KOZHIKODE, PIN - 673010

BY ADVS.
SHRI.JAWAHAR JOSE
SHRI.AUGUSTINE P.
SHRI.SANAND RAMAKRISHNAN
SMT.CISSY MATHEWS
SHRI.GREGORY PRINCE MYLADI

RESPONDENT(S) / WRIT PETITIONERS / RESPONDENTS 1 TO 3:

- 1 M/S. PRAJITH BUILDERS & DEVELOPERS PRIVATE LIMITED
REPRESENTED BY ITS MANAGING DIRECTOR MR. PRAJITH C.M,
ROOM NO.17/1168, HAPPY BUILDING, NEAR SABHA SCHOOL,
PUTHIYARA, KOZHIKODE, PIN - 673004
- 2 MR. PRAJITH C.M,
AGED 40 YEARS
S/O. RAMACHANDRAN, MANAGING DIRECTOR,
M/S. PRAJITH BUILDERS & DEVELOPERS PRIVATE LIMITED,
CHITHRAM, CHELLAPRA MEETHAL, IRINGALLUR,
KOZHIKODE, PIN - 673014
- 3 UNION OF INDIA
REPRESENTED BY THE SECRETARY,
MINISTRY OF FINANCE, JEEVAN DEEP BUILDING,
SANSAD MARG, NEW DELHI, PIN - 110001



- 4 THE DEBIT RECOVERY APPELLATE TRIBUNAL
REPRESENTED BY THE REGISTRAR, 7TH FLOOR,
SASTHRI BHAVAN, CHENNAI,
TAMIL NADU, PIN - 600034

- 5 THE DEBT RECOVERY TRIBUNAL - I
REPRESENTED BY THE REGISTRAR, 2ND FLOOR,
K.S.H.B BUILDING, PANAMPILLY NAGAR,
ERNAKULAM, PIN - 682036

BY ADVS.
SMT.NISHA GEORGE
SRI.GEORGE POONTHOTTAM (SR.)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 08.12.2025,
THE COURT ON 07.01.2026 DELIVERED THE FOLLOWING:

**JUDGMENT****Muralee Krishna S., J.**

The 4th respondent in W.P.(C)No.21833 of 2024 filed this writ appeal under Section 5(i) of the Kerala High Court Act, 1958, challenging the judgment dated 14.08.2024 passed by the learned Single Judge in that writ petition.

2. W.P.(C)No.21833 of 2024 is filed by respondents 1 and 2 herein under Article 226 of the Constitution of India seeking the following reliefs:

- "i) Issue a writ calling for the records leading to Ext-P9 in relation to SA 530/2022 on the file of the 3rd respondent and to pass appropriate orders to meet the ends of justice;
- ii) Issue a writ declaring that the manner in which respondents 2 and 3 are performing its statutory duty, is defeating the very purpose of conferring of quasi-judicial power on the said authority, which can be seen from any order that is passed by respondents 2 and 3"

3. The 1st respondent herein is a private limited company managed by the 2nd respondent. Going by the pleadings in the writ petition, the 1st respondent is engaged in the business of construction and it had availed an overdraft facility to the limit of Rs.70 lakhs on 29.06.2017 from Kerala Gramin Bank ('the Bank' for short). When there was default in repayment, the Bank issued a demand notice dated 31.08.2021, under Section 13(2) of the



Securitisation and Reconstruction of Financial Assets and Security Interest Enforcement Act, 2002 (the 'SARFAESI Act' for short) with regard to the said overdraft facility and two other accounts to the 2nd respondent, and the guarantors. Challenging the notice, respondents 1 and 2 and the guarantors preferred W.P.(C)No.18140 of 2022 before this Court and by Ext.P1 judgment dated 16.06.2022 the said writ petition was closed, recording the submission of the counsel for the appellant that since there were some defects in the notices issued under Section 13(2) of the SARFAESI Act, those notices had been withdrawn.

3.1 Thereafter, the appellant issued another demand notice dated 27.06.2022 demanding payment of a sum of Rs.88,59,605.33. The said notice was issued to the 2nd respondent in his capacity as the proprietor of Prajith Builders and Developers and also to the guarantors. The respondents 1 and 2 filed an objection to the demand notice. However, the appellant did not furnish a reply to the said representation as mandated under Section 13(3A) of the SARFAESI Act. Challenging the recovery measures resorted to by the appellant, respondents 1 and 2 preferred S.A.No.530 of 2022 before the Debts Recovery Tribunal I, Ernakulam (the 'Tribunal' in short) on 28.10.2022, wherein, as



per the order in I.A.No.2618 of 2022, the Tribunal issued an order of *status quo*. In the said S.A., respondents 1 and 2 preferred I.A.No.1048 of 2023 seeking a stay against the Advocate Commissioner taking physical possession of the subject matter properties, pending disposal of the S.A. However, by Exts.P3 and P4 orders dated 15.06.2023, the Tribunal dismissed I.A.Nos.1048 of 2023 and 2618 of 2022.

3.2 Against Exts.P3 and P4 orders, respondents 1 and 2 preferred OP(DRT)No.258 of 2023 before this Court. Despite the pendency of the OP(DRT), the Bank proceeded with coercive proceedings and hence respondents 1 and 2 filed I.A.No.3650 of 2023 in S.A.No.530 of 2022 seeking an order against their dispossession from the secured asset. However, by Ext.P5 order dated 14.11.2023, the Tribunal dismissed I.A.No.3650 of 2023. Against Ext.P5 order, the respondents 1 and 2 preferred OP(DRT)No.529 of 2023 before this Court and as per the order dated 20.12.2023, this Court deferred all coercive proceedings till 05.01.2024 taking note of the fact that respondents 1 and 2 remitted a sum of Rs.35 lakhs as upfront payment for consideration of the One Time Settlement ('OTS' for short) Scheme. Thereafter, by Ext.P6 judgment dated 16.01.2024, this Court disposed of



OP(DRT)No.258 of 2023 and 529 of 2023, directing the Tribunal to hear and finally dispose of S.A.No.530 of 2022 expeditiously, at any rate, within a period of two months.

3.3. S.A.No.530 of 2022 was heard in detail by the Tribunal on different dates, and by Ext.P9 order dated 14.06.2024, the Tribunal dismissed S.A.No.530 of 2022. Contending that the Bank is taking steps to take over the physical possession of the properties without issuing a fresh notice and there will be inordinate delay in the consideration of the appeal and interim applications by the Debt Recovery Appellate Tribunal ('DRAT' for short), respondents 1 and 2 preferred W.P.(C)No.21833 of 2024 before this Court with the aforementioned prayers.

4. In the writ petition, the appellant filed a counter affidavit dated 07.08.2024 opposing the reliefs sought by respondents 1 and 2. Paragraphs 3 and 4 of that counter affidavit read thus:

"3. It is submitted that the above reliefs sought by the writ petitioner is not proper and hence not maintainable. The document produced as Exhibit P9 is the proceedings of the Learned Debt Recovery Tribunal and the same cannot be challenged without challenging the order passed by the DRT. The Learned Debt Recovery Tribunal has passed a detailed order as stated in Exhibit P9 and the petitioner has statutory remedy of filing an appeal against the said order before the



Learned Debt Recovery Appellate Tribunal. The above Writ petition is therefore liable to be dismissed on this short ground alone.

4. Without prejudice to the above, the averment that the 1st petitioner had availed the loan facility from this respondent is incorrect. The Loan was availed by the 2nd petitioner as the Proprietor of M/s Prajith Builders and Developers. Admittedly the 2nd petitioner has received all the notices issued under the provisions of SARFEASI Act. In Such circumstances, the assertion in the SA filed before the DRT and in the Writ petition that SARFEASI proceedings have been initiated without serving notice to the borrower is incorrect and made by the petitioner to prejudice the mind of this Hon'ble Court. The further statement that the petitioners were prompt in repayment and active transaction on the overdraft facility is incorrect and denied. It is submitted that Mr.Praveen C.M, Praveesh C.M. and Prameela C.M. are the guarantors to the loan availed by the 2nd petitioner and their property has been mortgaged to this respondent as a collateral security to the loan account. Since the said persons have availed another loan from this respondent and the secured assets in the account of the 2nd petitioner is mortgaged to the said loan account of M/s Beaumonde Furniture, the said fact has been stated in the demand notice. There is no illegality in stating such facts. All the factual and legal contentions taken by the petitioner in the Securitisation Application has been answered by the Learned DRT in the judgment/order passed by them. The petitioner cannot re-agitate those issues in this writ petition without challenging the order of the DRT in the manner



known to the law, it is submitted that the challenge as against the constitution and procedure followed by the DRT and DRAT are incorrect and made by the petitioners to take undue advantage against the statutory recovery actions initiate by this respondent.”

5. To the counter affidavit filed by the appellant, the respondents 1 and 2 herein filed a reply affidavit dated 12.08.2024, producing therewith Exts.P10 to P12 documents.

6. After hearing both sides and on appreciation of materials on record, the learned Single Judge by the impugned judgment dated 14.08.2024 closed the writ petition by issuing certain directions. Paragraphs 2 to 6 and the last paragraph of that judgment read thus:

“2. Against the decision taken by the DRT-I, Ernakulam dated 14.06.2024 dismissing the SA No. 530/2022 filed by the petitioner, the petitioner has filed the statutory appeal before the Debt Recovery Appellate Tribunal, Chennai. However, the said appeal has not been numbered yet, inasmuch as the petitioner has not made the statutory deposit for maintaining the appeal.

3. As per the notice issued under Section 13(2) of the SARFAESI Act, 2002 the total outstanding of the respondent bank against the petitioner is Rs. 88,59,605.33/-. The petitioner in pursuance to the interim order passed by this Court on 19.06.2024 has already remitted 10 lakhs. However, Rs.10 lakhs falls short of minimum 25% of the statutory deposit for maintaining the appeal.



4. The learned counsel for the petitioner submits that the petitioner has already remitted Rs. 36,00,000/- in total after Section 13(2) notice was issued to the petitioner.

5. In view thereof, the present writ petition is disposed of with direction to the petitioner to deposit a further sum of Rs. 15,00,000/- within a period of two weeks from today before the bank. Petitioner should take immediate steps to get the appeal numbered. After making deposit of Rs.15,00,000/- as directed above, the DRAT shall proceed with the hearing of the appeal on merit within two weeks and decide the same expeditiously, preferably within a period of three months thereafter. For a period of 3 ½ months the bank shall not proceed against the petitioner.

6. In the mean time, the petitioner may also approach the bank for one time settlement/re-scheduling the payment terms of the loan taken by the petitioner from the bank.

With the afore said direction the present writ petition stands closed."

7. After the passing of the impugned judgment dated 14.08.2024 in the writ petition, respondents 1 and 2 filed R.P.No.1265 of 2024 before the learned Single Judge seeking review of the aforesaid judgment. By the order dated 29.11.2024, the learned Single Judge ordered the said review petition as under:

"1. The present Review Petition has been filed seeking review of the Judgment dated 14.08.2024 passed in W.P.(C) No. 21833 of 2024.

2. Mr. George Poonthottam, learned Senior Counsel for the petitioners assisted by Ms. Kavya Varma submits that, in



the fifth paragraph of the Judgment dated 14.08.2024 passed in W.P.(C) No. 21833 of 2024, this Court directed the petitioners to make deposit of Rs. 15,00,000/- within a period of two weeks from the date of the said Judgment. However, the Court inadvertently omitted to mention that this deposit would be towards the statutory predeposit to maintain the appeal before the Debt Recovery Appellate Tribunal (DRAT), Chennai. The learned Counsel for the respondent Bank does not dispute this assertion of the learned Senior Counsel.

4. In view thereof, the present Review Petition is hereby disposed of with clarification that the direction for further deposit of Rs. 15,00,000/- should be treated as a direction for statutory pre-deposit. The appeal, AIR (SA) No. 1048 of 2024 filed by the petitioners before the DRAT, Chennai should be considered on priority basis and expeditiously, preferably within a period of two months from today. No coercive measures to be taken against the petitioners till the aforesaid appeal, AIR (SA) No. 1048 of 2024 is finally decided by the DRAT, Chennai."

8. Being aggrieved by the impugned judgment dated 14.08.2024 passed in the writ petition, the appellant filed the present writ appeal, however, with a delay of 357 days. By the order dated 11.11.2025 in C.M.Appln.No.1 of 2025, we condoned the said delay and listed the appeal for admission. Then, respondents 1 and 2 filed R.P.No.1559 of 2025 to review the order dated 11.11.2025 passed in C.M.Appln.No.1 of 2025, contending



that there is an error apparent on the face of the record in that order. By a detailed order dated 28.11.2025, we dismissed the said review petition, having found it meritless.

9. Heard Sri.Jawahar Jose, the learned counsel for the appellant and Sri.George Poonthottam, the learned Senior Counsel for respondents 1 and 2.

10. The learned counsel for the appellant would submit that as per Section 18 of the SARFAESI Act, any person aggrieved by an order of the Tribunal under Section 17 of that Act can prefer an appeal before the DRAT within 30 days from the date of receipt of the order. By the second proviso to Section 18, no appeal shall be entertained unless the borrower has deposited with the appellate Tribunal 50% of the amount of the debt due, as claimed by the secured creditors or determined by the DRT, whichever is less. The liability to pay said 50% of the amount of the debt due, as per Section 2(g) of the Recovery of Debts Due to Banks and Financial Institutions Act, is inclusive of interest. As per the third proviso to Section 18, the DRAT can waive only 25% of the debt referred to in the second proviso to Section 18(1), that also by recording the reasons. In the instant case, as on 17.09.2025, the respondents 1 and 2 are liable to pay an amount of Rs.1,12,87,071.97. Therefore,



they have to deposit an amount equal to 25% of the said amount while preferring the appeal before the DRAT. If the amount is calculated as aforesaid, respondents 1 and 2 are liable to deposit Rs.28,21,766/- while presenting appeal before the DRAT. The learned counsel vehemently argued that when there is a provision to challenge the order of the Tribunal by filing a statutory appeal before the DRAT, a writ petition under Article 226 of the Constitution of India is not maintainable. It is also the arguments of the learned counsel that the predeposit contemplated under Section 18 of the SARFAESI Act is an amount that has to be deposited before the DRAT, which on culmination of the appeal will be returned to the depositor and not to the Bank. In that view of the matter also the direction of the learned Single Judge to count the amount deposited with the Bank as an upfront amount or as directed by the learned Single Judge, as the mandatory predeposit to be made before the DRAT, is illegal. In support of his arguments, the learned counsel relied on the judgments of the Apex Court in **Union Bank of India v. Rajat Infrastructure Private Limited [(2020) 3 SCC 770]**, **Kotak Mahindra Bank Private Limited v. Ambuj A. Kasliwal [(2021) 3 SCC 549]**, **Sidha Neelkanth Paper Industries Private Limited v. Prudent ARC Limited**



[2023 SCC Online SCC 12] and that of this Court in **Union Bank of India v. M/S.Suwique Traders [2025 (4) KHC SN 30]**.

11. On the other hand, the learned Senior Counsel appearing for respondents 1 and 2 would argue that after the filing of the writ petition, respondents 1 and 2 have preferred an appeal under Section 18 of the SARFAESI Act before the DRAT, Chennai. As per the interim order dated 19.06.2024 in W.P.(C)No.21833 of 2024 passed by the learned Single Judge, a sum of Rs.10 lakhs was deposited before the Bank by respondents 1 and 2. Thereafter, taking note of the aforesaid deposit, by the impugned judgment dated 14.08.2024, the learned Single Judge directed the respondents 1 and 2 to deposit a sum of Rs.15 lakhs to make up the shortfall of the minimum 25% of the statutory predeposit to be made before the DRAT for filing the appeal. In the order dated 29.11.2024, it was clarified that the aforesaid deposit of Rs.15 lakhs directed to be made before the Bank should be treated as the statutory predeposit to be made before the DRAT under Section 18 of SARFAESI Act. In R.P.No.1265 of 2024, the Bank did not dispute the fact that the aforesaid deposit made by the respondents 1 and 2 will not cover 25% mandatory predeposit to be made at the time of filing the appeal before the DRAT. The learned Senior Counsel



disputed the outstanding due amount stated by the Bank in the appeal. It is also the arguments of the learned Senior Counsel that though the Bank clubbed three accounts while stating the total amount due, the subject matter of the action initiated by the Bank under the provisions of the SARFAESI Act is only one account. According to the learned Senior Counsel, after admitting the payment made by respondents 1 and 2 as 25%, it is not appropriate on the part of the appellant to file the appeal with a delay condonation petition.

12. To this argument of the learned Senior Counsel, the learned counsel for the appellant would submit that a concession made by a counsel cannot be taken as a ground against a statutory provision. The learned counsel further pointed out that the steps taken by the bank is in respect of all the three accounts and not one alone as submitted by the learned Senior Counsel. The learned counsel further pointed out that Ext.P9 order under challenge in the writ petition is only a printout of the diary extracted from the website, and the speaking order of the Tribunal is not produced by the respondents 1 and 2 in the writ petition.

13. We have carefully perused the pleadings, materials placed on record and also appreciated the rival contentions raised



by the parties. The appellant Bank initiated the proceedings against respondents 1 and 2 under the provisions of the SARFAESI Act when the overdraft amount became due. The notice issued under Section 13(2) of SARFAESI Act and the subsequent steps taken by the Bank to take possession of the secured asset was challenged by the respondents 1 and 2 before the Tribunal by filing S.A.No.530 of 2022. When the aforesaid securitization application was ended against respondents 1 and 2, they preferred W.P.(C)No.21833 of 2024 before this Court under Article 226 of the Constitution of India, wherein the learned Single Judge passed the impugned judgment. Thereafter, by the order dated 29.11.2024 in R.P.No.1265 of 2024, some clarifications were also made by the learned Single Judge.

14. The issue to be decided in this writ appeal is as to the maintainability of the writ petition under Article 226 of the Constitution of India, in the given facts and circumstances, when a statutory provision is available to challenge the order of the Tribunal. To answer the aforesaid issue, it would be appropriate to go through Section 18 of the SARFAESI Act and the judgments on the point including those cited at the bar at the time of hearing the appeal.



15. Section 18 of the SARFAESI Act reads thus:

“18. Appeal to Appellate Tribunal.—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.”

16. In **Rajat Infrastructure [(2020) 3 SCC 770]**, the Apex Court, while answering the question whether the High Court was right in directing that predeposit was not required for entertaining an appeal before the DRAT as mandated by Section 18



of the SARFAESI Act, held thus:

"10. This Court in *Narayan Chandra Ghosh v. UCO Bank* [(2011) 4 SCC 548], held that keeping in view the language of Section 18 even if the amount or debt due had not been determined by DRT, the appeal could not be entertained by DRAT without insisting on pre-deposit. DRAT, at best could, after recording the reasons, have reduced the amount to 25% but could not have totally waived the deposit. This Court also held that the right of appeal conferred under Section 18(1) is subject to the conditions laid down in the second proviso therein which postulates that no appeal shall be entertained unless the borrower has deposited 50% of the amount of debt due from him as claimed by the secured creditors or determined by DRT, whichever is less. The third proviso enables DRAT, for reasons to be recorded in writing, to reduce the amount of deposit to not less than 25%.

11. The following observations of this Court in *Narayan Chandra Ghosh* [(2011) 4 SCC 548] are relevant : (SCC p. 550, para 7)

"7 ... Thus, there is an absolute bar to the entertainment of an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower makes, with the Appellate Tribunal, a pre-deposit of fifty per cent of the debt due from him or determined, an appeal under the said provision cannot be entertained by the Appellate Tribunal. The language of the said proviso is clear and admits of no ambiguity."

12. In view of the law laid down by this Court, we are clearly



of the view that the observation made by the High Court was totally incorrect.

13. We are not in agreement with the submission of Mr Chaudhri that the High Court has exercised its discretionary powers under Article 226 of the Constitution. The order of the High Court does not show any exercise of such discretionary powers but according to the High Court on an interpretation of the section, pre-deposit was not required. We are also not impressed with the argument of Mr Chaudhri that his client is not a borrower. A guarantor or a mortgagor, who has mortgaged its property to secure the repayment of the loan, stands on the same footing as a borrower and if he wants to file an appeal, he must comply with the terms of Section 18 of the SARFAESI Act."

(Underline supplied)

17. In **Kotak Mahindra Bank [(2021) 3 SCC 549]**, while answering the challenge against the judgment of High Court of Delhi, permitting respondents 1 and 2 therein to prosecute the appeal before the DRAT without predeposit of portion of the debt determined to be due as provided under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993, which is in *pari materia* with Section 18 of the SARFAESI Act, the Apex Court held thus:

"13. A perusal of the provision which employs the phrase "appeal shall not be entertained" indicates that it injuncts the Appellate Tribunal from entertaining an appeal by a person from whom the amount of debt is due to the Bank, unless such person has deposited with the Appellate



Tribunal, fifty per cent of the amount of debt so due from him as determined by the Tribunal under Section 19 of the Act. The proviso to the said section, however, grants the discretion to the Appellate Tribunal to reduce the amount to be deposited, for reasons to be recorded in writing, but such reduction shall not be less than twenty-five per cent of the amount of such debt which is due. Hence the pendulum of discretion to waive pre-deposit is allowed to swing between fifty per cent and twenty-five per cent of the debt due and not below twenty-five per cent, much less not towards total waiver. It is in that background, keeping in perspective the said provision, the DRAT has in the instant case ordered deposit of fifty per cent of the amount. Respondents 1 and 2 while seeking waiver of the deposit have essentially projected the case to indicate that the recovery certificate ordered by the DRT is for the sum of Rs 145 crores with interest at 9 per cent per annum and the amount realised by the Bank from the compensation amount payable to Respondent 3 is itself a sum of Rs 152,81,07,159 (Rupees one hundred fifty-two crores, eighty-one lakhs, seven thousand, one hundred and fifty-nine) and as such there is no debt due.

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21. As already noted, a total waiver would be against the statutory provisions. However, in the instant case, taking note that though the issue relating to the actual amount due is to be considered by the DRAT, keeping in view the fact that the DRT has taken into consideration the earlier settlement and has accordingly decreed the claim to that extent and towards such decree since payment of a major



portion is made, though by appropriation of the compensation amount and admittedly since the remaining properties belonging to Respondent 3 are available by way of mortgage and Respondents 1 and 2 are the personal guarantors, we deem it appropriate that in the peculiar facts and circumstances of this case to permit the pre-deposit of twenty-five per cent of the amount as taken note of by the DRAT i.e. twenty-five per cent of Rs 68,18,92,841 (Rupees sixty-eight crores, eighteen lakhs, ninety-two thousand, eight hundred and forty-one). To the said extent, the order dated 27.02.2019 passed by the DRAT on IA No. 511 of 2018 is liable to be modified.” (Underline supplied)

18. In **Sidha Neelkanth Paper Industries [2023 SCC online SC 12]**, while considering the interpretation of Section 18 of the SARFAESI Act, the Apex Court held thus:

“14. As observed hereinabove and as per the second proviso to Section 18 of the SARFAESI Act, it is the “borrower” who has preferred an appeal before the Appellate Tribunal and the “borrower” who shall have to deposit 50% of the amount of “debt due” from him. If the words used in the second proviso to Section 18 of the SARFAESI Act are “borrower has to deposit”, it is not appreciable how the amount deposited by the auction purchaser on purchase of secured assets can be adjusted and/or appropriated towards the amount of pre-deposit, to be deposited by the borrower. It is the “borrower” who has to deposit the 50% of the amount of “debt due” from him. At the same time, if the borrower wants to appropriate and/or adjust the amount realised



from sale of the secured assets deposited by the auction purchaser, the borrower has to accept the auction sale. In other words, the borrower can take the benefit of the amount received by the creditor in an auction sale only if he unequivocally accepts the sale. In a case where the borrower also challenges the auction sale and does not accept the same and also challenges the steps taken under Section 13(2)/13(4) of the SARFAESI Act with respect to secured assets, the borrower has to deposit 50% of the amount claimed by the secured creditor along with interest as per section 2(g) of the Act 1993 and as per section 2(g), "debt" means any liability inclusive of interest which is claimed as due from any person.

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17. In view of the above and for the reasons stated above, the respective appeals preferred by the financial institution/assignee and auction purchasers being civil Appeal Nos. 8970, 8972, 8973 and 8974 of 2022 are hereby allowed. The appeal preferred by the borrower against the judgment and order passed by the Delhi High Court being Civil Appeal No. 8969/2022 deserves to be dismissed and is accordingly dismissed. It is observed and held that the borrower has to deposit 50% of the amount of "debt due" as claimed by the bank/financial institution/assignee along with interest as claimed in the notice under Section 13(2) of the SARFAESI Act and the borrower is not entitled to claim adjustment/appropriation of the amount realised by selling the secured properties and deposited by the auction purchaser when the auction sale is also under challenge."

(Underline supplied)



19. This Court in **M/s. Suwique Traders [2025 (4) KHC SN 30]**, while considering the question of mandatory pre-deposit to be made before the DRAT under Section 18 of the SARFAESI Act, held thus:

"19. In view of the provisions under Section 18(1) of the SARFAESI Act and the law laid down by the Apex Court in Narayan Chandra Ghosh [(2011) 4 SCC 548] there is an absolute bar to the entertainment of an appeal under Section 18 unless the condition precedent, as stipulated in the second proviso to Section 18(1), is fulfilled. As held by the Apex Court, the requirement of pre-deposit under the second proviso to Section 18(1) is mandatory, and the Debts Recovery Appellate Tribunal, which is a creature of the statute, cannot refuse to give full effect to the provisions of Section 18(1). In view of the provisions contained in the second and third provisos to Section 18(1), a complete waiver of pre-deposit is beyond the provisions of Section 18(1). In an appeal filed under Section 18, which is accompanied by an application for waiver of pre-deposit, invoking the provisions under the third proviso to Section 18(1), the Appellate Tribunal can, for reasons to be recorded in writing, reduce the pre-deposit to not less than twenty-five per cent of the debt referred to in the second proviso to Section 18(1).

20. When complete waiver of pre-deposit is beyond the provisions of Section 18(1) of the SARFAESI Act, it cannot be contended that, a person aggrieved by any order made by the Debts Recovery Tribunal under Section 17, can prefer



an appeal before the Appellate Tribunal, within the time limit specified in Section 18(1), along with an application for complete waiver of pre-deposit under the second proviso to Section 18(1), after remitting only the fee provided under Section 18(1), since the Appellate Tribunal cannot grant complete waiver of pre-deposit, which is beyond the scope of the provisions contained in the second and third provisos to Section 18(1). In that view of the matter, in an appeal filed under Section 18 of the Act, which is accompanied by an application invoking the provisions of the third proviso to Section 18(1) for waiver of pre-deposit, as stipulated in the second proviso to Section 18(1), the appellant has to deposit with the Appellate Tribunal twenty-five per cent of the debt referred to in the second proviso to Section 18(1). The Appellate Tribunal cannot entertain, i.e., give judicial consideration of an appeal filed under Section 18 and the interlocutory application filed under the third proviso to Section 18(1) for waiver of predeposit, as stipulated in the second proviso to Section 18(1), unless the appellant has deposited with the Appellate Tribunal twenty-five per cent of the debt referred to in the second proviso to Section 18(1). Therefore, we find absolutely no merit in the submission of the learned counsel for the respondents-petitioners that the respondents are required to remit only the prescribed fee as provided under Section 18(1) of the Act, at the time of preferring Ext.P2 appeal and the question of deposit with the Appellate Tribunal the pre-deposit provided under the second proviso to Section 18(1) arises only on an order being passed by the Appellate Tribunal on the application for waiver.” (Underline supplied)



20. From the judgments referred to supra, it is clear that the DRAT cannot entertain or give judicial consideration of an appeal filed under Section 18, unless the appellant has deposited with the DRAT 25% of the debt referred to the second proviso to Section 18(1). At the most, the DRAT can waive predeposit of the remaining 25% of the debt referred to in the second proviso to Section 18(1). A complete waiver of predeposit is beyond the provisions of Section 18(1).

21. From the provisions under the SARFAESI Act, we notice that there is no provision which permits or stipulates the aforesaid predeposit of 25% to be made at the time of filing of the appeal before the DRAT, to be made before the Bank. From the submissions made at the Bar, we notice that though there is no specific provision in the SARFAESI Act as to how the aforesaid predeposit has to be dealt with on conclusion of the appeal, the procedure followed by the DRAT is that after the conclusion of the appeal, the amount deposited before it will be returned back to the depositor, especially when considering the fact that even an aggrieved third party to the proceedings before the Tribunal, can appeal before the DRAT against the order of the Tribunal. In such circumstances, we find no legal backing for the order of the learned



Single Judge to count the amount deposited before the Bank as the mandatory predeposit to be made before the DRAT.

22. Now coming to the question of maintainability of a writ petition before this Court under Article 226 of the Constitution of India challenging the order of the Tribunal, it is relevant to note some of the judgments of the Apex Court as well as this Court.

23. In **Authorized Officer, State Bank of Travancore and Another v. Mathew K.C. [2018 (1) KHC 786]**, the Apex Court held that the High Court under Article 226 of the Constitution of India can entertain a writ petition only under exceptional circumstances and that it is a self-imposed restraint by the High Court. The four exceptional circumstances such as, where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, were re iterated in paragraph 6 of the said judgment by relying on the judgment of the Apex Court in **Commissioner of Income Tax v. Chhabil Dass Agarwal [(2014) 1 SCC 603]**.

24. In **South Indian Bank Ltd. (M/s.) v. Naveen**



Mathew Philip [2023 (4) KLT 29], after discussing the various judgments on the point as to circumstances in which the High Court can interfere with matters pertaining to the SARFAESI Act, it is held by the Apex Court as under:

“Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Art.226 of the Constitution if an effective remedy is available to the aggrieved person and that 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. In our view, 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 a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi - judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Art.226 of the Constitution, a person must exhaust the remedies available under the relevant statute”.

(Underline supplied)

25. In **Sreedhar K. v. M/S.Raus Constructions Pvt. Ltd. [2023 KLT Online 1007 (SC)]**, the Apex Court, while considering the requirement of deposit of 25% of the debt due before the Debts Recovery Appellate Tribunal to avail the statutory remedy of appeal, held thus:



"6. At the outset, it is required to be noted that what was challenged before the High Court by the borrower in a writ petition under Article 226 of the Constitution of India was the judgment and order passed by the DRT-I. Against the judgment and order passed by the DRT-I dismissing the application, the borrower had a statutory remedy available by way of appeal before the DRAT. If the borrower would have preferred an appeal before the DRAT, he would have been required to deposit 25% of the debt due. To circumvent the provision of appeal before the DRAT and the pre-deposit, the borrower straightway preferred the writ petition before the High Court under Article 226/227 of the Constitution. Therefore, in view of alternative statutory remedy available by way of appeal before the DRAT, the High Court ought not to have entertained the writ petition under Article 226/227 of the Constitution of India challenging the judgment and order passed by the DRT- I. By entertaining the writ petition straightway under Article 226/227 of the Constitution of India challenging the order passed by the DRT-I, the High Court has allowed/permitted the borrower to circumvent the provision of appeal before the DRAT under the provisions of the SARFAESI Act."

(Underline supplied)

26. In **PHR Invent Educational Society v. UCO Bank** [2024 (3) KHC SN 3] the Apex Court held that it is more than a settled legal position of law that in matters arising out of RDB Act and SARFAESI Act, the High Court should not entertain a petition under Art.226 of the Constitution, particularly when an alternative



statutory remedy is available.

27. A learned Single Judge of this Court in **Jasmin K. v. State Bank of India [2024 (3) KHC 266]** reiterated the position of law laid down by the Apex Court in the aforementioned judgments.

28. From the judgments quoted above, it is clear that unless the four exceptional circumstances mentioned by the Apex Court in **Mathew K.C. [2018 (1) KHC 786]** are satisfied, the writ jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked. When the facts of the instant case as narrated above are analyzed in the light of the judgments referred to supra pertaining to the maintainability of a writ petition under Article 226 of the Constitution of India, it can only be said that since an efficacious statutory remedy is available to the respondents 1 and 2 before the DRAT under Section 18 of the SARFAESI Act against the order of the Tribunal, a writ petition under Article 226 of the Constitution of India is not maintainable. In the instant case, only vague allegations are raised by respondents 1 and 2 that the DRAT will not consider the appeal preferred by them within time. There is absolutely nothing to arrive at such a conclusion by the respondents 1 and 2.



29. Having considered the pleadings and materials on record and the submissions made at the Bar, we find that the learned Single Judge passed the impugned judgment without considering these aspects in its proper perspective. Therefore, the impugned judgment of the learned Single Judge is liable to be set aside.

In the result, the writ appeal is allowed by setting aside the judgment dated 14.08.2024 passed by the learned Single Judge in W.P.(C)No.21833 of 2024 and the writ petition stands dismissed.

Sd/-

ANIL K. NARENDRA, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE

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