IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

MONDAY, THE 5TH DAY OF JANUARY 2026 / 15TH POUSHA, 1947

WA NO. 3177 OF 2025

AGAINST THE JUDGMENT DATED 27.11.2025 IN WP(C)NO.11083 OF 2025 OF HIGH COURT OF KERALA

APPELLANT(S)/PETITIONERS:

1 RAJU ABRAHAM
AGED 63 YEARS
S/O.VARGHESE, PATHICKAL HOUSE, KADAYINIKKADAVU P.O,
VAZHOOR VILLAGE, CHANGANASSERY,
KOTTAYAM,, PIN - 686541

2 MOLLY ABRAHAM
AGED 61 YEARS
W/O.RAJU ABRAHAM, PATHICKAL HOUSE,
KADAYINIKKADAVU P.O, VAZHOOR VILLAGE,
CHANGANASSERY, KOTTAYAM, PIN - 686541

BY ADV SRI.T.M.ABDUL LATHEEF

RESPONDENT(S)/RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
CO-OPERATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

2 ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
CO-OPERATIVE SOCIETIES, CHANGANASSERY,
KOTTAYAM, PIN - 686101

3 VAZHOOR FARMERS SERVICE CO-OPERATIVE BANK LTD 2278
REPRESENTED BY ITS MANAGING DIRECTOR,
VAZHOOR, CHANGANASSERY,
KOTTAYAM, PIN - 686541

4 DISTRICT COMMITTEE
KOTTAYAM CO-OPERATIVE SOCIETY LTD,
REPRESENTED BY ITS SECRETARY,
KOTTAYAM, PIN - 686001

SMT. MARY BEENA JOSEPH, SR. GP;
SRI. NANDAGOPAL. S. KURUP FOR R3

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19.12.2025, THE COURT ON 05.01.2026 DELIVERED THE FOLLOWING:

<u>JUDGMENT</u>

<u>Muralee Krishna S., J.</u>

The petitioners in W.P.(C)No.11083 of 2025 filed this Writ Appeal under Section 5(i) of the Kerala High Court Act, 1958, challenging the judgment dated 27.11.2025 passed by the learned Single Judge in that writ petition.

2. Going by the averments in the writ petition, the appellants have availed three loans from the 3rd respondent Vazhoor Farmers Service Co-operative Bank Ltd.('the Bank' for short) and executed a mortgage deed in favour of the bank, creating an equitable mortgage over their property. Due to default in repayment, arbitration proceedings were initiated under Section 69 of the Kerala Co-operative Societies Act, 1969 ('the Act' for short), in respect of the loans and *ex parte* awards were passed against the appellants. In the revision petitions filed by the appellants, the Co-operative Tribunal issued a direction to the bank to regularise the accounts, so as to continue the repayment. There was no intimation from the bank about the payment to be effected as on 30.10.2018, and the respondent had not initiated any recovery proceedings. In the case of co-operative banks, the direction issued by the Government was to be followed by the

bank, and it was accordingly, there were no recovery proceedings initiated, and non-payment of any amount by the appellants was not due to any fault on their part. However when the respondents were proceeding with recovery proceedings without regularizing the loan liability and has declared that in front of the appellants' residential house they will raise board stating that the property of the appellants is under sale proceedings and that appellants are defaulters, the appellants have filed representation before the 2nd respondent Assistant Registrar stating that their loans are to be regularized and waiver of interest may be given and further the penal interest and other charges to be excluded and the loan liability as on the date of regularization may be permitted to be remitted in 40 instalments. The appellants have stated that their only income is about Rs.20,000/-, which they are getting by way of rent from their saw mill, and the 1st appellant is suffering from a serious liver problem and is undergoing treatment for which they are not able to take proper consultation and medication, etc. The appellants have submitted a representation after receiving notice to clear the liability under Navakerala Kudishika Nivaranam 2018. When recovery proceedings were initiated, the appellants approached this Court and obtained Ext.P1 and Ext.P2 judgments dated 10.08.2023 in W.P(C) No.9468 of 2021 and 17.11.2023 in W.A.No.1631 of 2023, respectively. Thereafter, the Bank issued Ext.P6 letter dated 11.07.2024 calculating the total liability of the appellants at Rs.57,10,982/- and the appellants have approached this Court by filing W.P.(C) No.25939 of 2024. As per Ext.P8 judgment dated 06.08.2024 in W.P.(C) No.25939 of 2024, this Court directed the District Level Committee formed for assessing the benefit to be given under the One Time Settlement Scheme, to take a decision, after considering the objection of the appellants also in the matter of One Time Settlement. Now the Bank issued Ext.P9 letter dated 14.02.2025 along with Ext.P10 order issued by the 4th respondent District Level committee and Ext.P11 calculation statement. The total amount directed to be paid was Rs.53,13,802/-. But the details were made in the said calculation statement, without hearing the appellants or even going through the circular conditions and benefits that were to be granted. The appellants have produced medical certificates to show that the 1st appellant is suffering from liver cirrhosis, and their case will come under the category wherein a substantial reduction is permissible even in the principal amount. Hence, Ext.P10 order of the 4th respondent District Level committee and Ext.P11 calculation statement are illegal and liable to be set aside. With these pleadings, the appellants filed W.P.(C)No.11083 of 2025 under Article 226 of the Constitution of India seeking the following reliefs:

> "i) To call for the records relating to Ext.P1 to Ext.P11 and to issue a writ of certiorari, quashing Ext.P10 and Ext.P11;
> ii) To issue a writ of mandamus, commanding the 4th respondent to determine the actual amount payable by the petitioners taking into the account their eligibility under the Scheme giving full benefits including the waiver of interest and penal interest also excluding the costs as stated in Ext.P11 and also permit petitioners to pay the amount if any found due in substantial number of installments if actually they are liable to pay the amount going by the decision of the 4th respondent committee."

3. On 27.11.2025, when the writ petition came up for consideration, the learned Single Judge dismissed the same by the impugned judgment. Paragraph 4 of that judgment read thus:

> "4. Having heard the learned counsel for the petitioners and the learned counsel for the respondent bank, I am of the view that the petitioners are not entitled to the reliefs sought for in the writ petition. It is settled law that a borrower cannot insist on a particular amount of waiver as one-time settlement, and there is no provision enabling the petitioners to insist that they should be extended a particular benefit under a scheme for one-time settlement. The provision for one-time settlement is a benefit offered to

the borrowers to settle their liability, and if the petitioners fail to utilise such an opportunity and settle the liability, they cannot be heard to contend that some further concession must be extended to them. The facts and circumstances of this case indicate that the petitioners have been conducting several rounds of litigation before this court from the year 2021 on one ground or another and have been delaying recovery proceedings initiated by the respondent bank. It is clear from a perusal of the pleadings that the liability of the petitioners was determined in arbitration proceedings initiated under Section 69 of the 1969 Act as early as in the year 2017. Even today, after obtaining benefits under the one-time settlement scheme introduced vide Circular No.18/2024 of the Registrar of Co-operative Societies, the petitioners have not settled the liability. The facts also indicate that in each of the loans availed by the petitioners, substantial concessions were extended to them in terms of Circular No.18/2024. Therefore, I find no grounds made out for the grant of the reliefs sought for in the writ petition. The writ petition fails, and it is accordingly dismissed."

4. Being aggrieved by the dismissal of the writ petition, the appellants-petitioners have filed the present writ appeal.

5. Heard the learned counsel for the appellants, the learned counsel for the 3rd respondent and the learned Senior Government Pleader.

6. The learned counsel for the appellants would submit that the appellants' liability was fixed as stated in Ext.P11

calculation details in respect of the appellants' two loans, and therefore, the learned Single Judge ought to have permitted the appellants to pay the outstanding liability stated in Ext.P11 in instalments. Subsequent to the dismissal of the writ petition, the Bank has made fresh demands, and there is a substantial difference of Rs.20 lakhs in the demand of the Bank. The claim of the appellants is not under the One Time Settlement Scheme, but the substantial benefit of the Scheme, which provides for an easy payment, for which it is stated that the matter may be settled in Adalath also. The Bank is now proceeding against a person who is suffering from liver cirrhosis. The payment made earlier, which comes to Rs.11 lakhs was deposited in 2011, is not adjusted by the Bank towards the loan liability, and it is still in the suspense account. However, the learned Single Judge did not give merit to these contentions.

7. On the other hand, the learned counsel for the 3rd respondent would submit that the appellants approached this Court with successive writ petitions to circumvent the recovery proceedings initiated by the Bank. By Ext.P1 judgment dated 10.08.2023, this Court permitted the appellants to clear the outstanding liability in fifteen monthly instalments. However, that

facility was not availed by the appellants, and instead they filed a Writ Appeal against Ext.P1 judgment, which ended in Ext.P2 judgment. The OTS facility subsequently offered by the Bank by Ext.P3 was also not availed by the appellants, and instead, they filed another writ petition, which resulted in Ext.P4 judgment dated 21.06.2024, permitting the appellants to apply under the new One Time Settlement Scheme. The matter was again considered by the Bank, in the light of Ext.P5 circular No.18 of 2024 and the appellants were issued with Ext.P6 letter fixing the liability in accordance with the said circular. Challenging Ext.P5 and the consequent Ext.P6 letter dated 11.07.2024 issued by the Bank, the appellants again approached this Court with another writ petition, which resulted in Ext.P8 judgment dated 06.08.2024. In Ext.P8 judgment, this Court directed that if the Bank forwarded the request of the appellants to the District Level Committee constituted for assessing the benefits to be given under the OTS Scheme, the said committee shall consider the objection of the appellants and also take a final decision in the matter in One Time Settlement. Pursuance to Ext.P10 decision of the District Level Committee, the appellants closed one loan. According to the Bank, Ext.P11 calculation statement under challenge in the present writ petition is issued on the basis of a subsequent One-time Settlement Scheme, and it is not the one issued on the basis of Ext.P10 decision of the District-level Committee.

8. The learned Senior Government Pleader would submit that Ext.P10 decision was taken by the District Level Committee, in view of Ext.P5 Scheme. Only if the Bank transmits amount as proposed in the Scheme, the Government can consider granting the benefits as stated in the Scheme.

9. The law is well settled regarding the interference of the Court in the matter of One Time Settlement Schemes declared by the Bank. The Apex Court in **Bijnor Urban Cooperative Bank Limited, Bijnor v. Meenal Agarwal [(2023) 2 SCC 805]**, while dealing with a question of whether such a direction can be given to the Bank by exercising the jurisdiction under Article 226 of the Constitution of India, held thus:

> "5.2 Therefore, <u>as per the guidelines issued, the grant of benefit of OTS Scheme cannot be prayed as a matter of right and the same is subject to fulfilling the eligibility criteria mentioned in the scheme</u>. The defaulters who are ineligible under the OTS Scheme are mentioned in clause 2,

reproduced hereinabove. A wilful defaulter in repayment of loan and a person who has not paid even a single installment after taking the loan and will not be able to pay the loan will be considered in the category of "defaulter" and shall not be eligible for grant of benefit under the OTS Scheme. Similarly, a person whose account is declared as "NPA" shall also not be eligible. As per the guidelines, the Bank is required to constitute a Settlement Advisory Committee for the purpose of examining the applications received and thereafter the said Committee has to take a decision after considering whether a defaulter is entitled to the benefit of OTS or not after considering the eligibility as per the OTS Scheme. While making recommendations, the Settlement Advisory Committee has to consider whether efforts have been made to recover the loan amount and the possibility of recovery has been minimized, meaning thereby if there is possibility of recovery of the amount, either by initiating appropriate proceedings or by auctioning the property mortgaged and/or the properties given as a security either by the borrower and/or by guarantor, the application submitted by the borrower for grant of benefit under the OTS Scheme can be rejected." (Underline supplied)

10. In **Idukki District Police Co-operative**

Society Ltd.No.1-490 v. Rasheed A.K. [2025 (4) KHC 44], the short question involved was whether the writ court can issue a writ of mandamus compelling the bank/financial institution to extend the benefit of the OTS scheme to the borrowers. After going through the judgments of the Apex Court on the point, a Division Bench of this Court held thus;

> "13. The ratio decidendi culled out from the aforesaid decision would clearly indicate that the borrowers availing the benefit of OTS Scheme is bound by the terms and conditions of the Scheme. If the borrower had committed breach of the terms and conditions of the OTS Scheme, the writ court cannot issue a writ of mandamus to the bank/financial institutions to extend the benefit of OTS Scheme. The relationship between the banker and the customer is based on the contract. <u>If the Writ Court interferes in the contractual relationship between the banker and the customer, it would result in rewriting of the contract, which is impermissible by a writ court</u>."
>
> (Underline supplied)

11. From the materials placed on record, we notice that on every stage, when the Bank proceeded to recover the amount outstanding in the loan accounts of the appellants, they approached this Court with writ petitions after writ petitions. For the first time, the appellants approached this Court with W.P.(C)No.9468 of 2021, which was disposed of by Ext.P1

judgment on 10.08.2023, permitting the appellants to pay the then outstanding amount of more than Rs.75 lakhs in fifteen equal monthly instalments. However, challenging the same appellants filed W.A.No.1631 of 2023, which resulted in Ext.P2 judgment, permitting the appellants to approach the Bank with a proposal for One Time Settlement in the 2023 Scheme. Though by Ext.P3 communication dated 29.01.2024, the Bank informed the appellants of the concessions they are entitled to in terms of 2023 Scheme, the appellants again filed another writ petition as W.P.(C)No.20490 of 2024 before this Court. By Ext.P4 judgment dated 21.06.2024, this Court permitted the appellants to apply for the settlement under the new OTS Scheme introduced by Circular No.18/2024. The matter was again considered by the Bank, and by Ext.P6 communication, the appellants were informed about the benefits permissible to be availed by them. That communication was challenged by the appellants by W.P.(C)No.25939 of 2024, contending that the claim for settlement ought to have been considered by the District Committee and not by the Bank. Again, by Ext.P8 judgment, this Court directed the application for the settlement filed by the appellants to be considered by the District Level Committee. Pursuant to the same, by Ext.P10 proceedings of the District Committee, the appellants were permitted to clear the liabilities by granting certain concessions. However, the appellants could clear only one loan availed by the 1st appellant. Thereafter, they again approached this Court with the present writ petition i.e., W.P.(C)No.11083 of 2025.

12. From the submission made by the learned Counsel for the Bank, we notice that Ext.P11 calculation statements relied on by the appellants are not issued in pursuance of Ext.P10 decision of the District Committee in accordance with the directions issued in Ext.P8 judgment. The learned counsel for the Bank would submit that it is on the basis of another new OTS Scheme, Ext.P11 calculation statement was issued by the Bank. As found by the learned Single Judge, the provisions for One Time Settlement are a benefit offered to the borrowers to settle their liability, and if they failed to utilise such an opportunity, they cannot be heard to contend that some further concession must be extended to them. In the present case, the appellants could not avail the benefit of the Settlement offered to them by Ext.P10 decision of the District Level Committee. In the light of the judgment referred to supra, it is only to be held that the appellants cannot now contend that the Bank has to be directed to give them the benefit of another

One Time Settlement Scheme, in pursuance of which Ext.P11 calculation statement was issued. Moreover, as held above, the appellants cannot maintain a writ petition under Article 226 of the Constitution of India claiming the benefit of the One Time Settlement Scheme. In such circumstances, we find no ground to interfere with the impugned judgment of the learned Single judge.

In the result, the writ appeal stands dismissed.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE

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APPENDIX OF WA NO. 3177 OF 2025

PETITIONER ANNEXURES

Annexure A1	**TRUE COPY OF THE NOTICE DEMANDING AMOUNT RS. 22,34,908 DATED 28.11.2025 WERE GIVEN TO THE 1ST APPELLANT**
Annexure A2	**TRUE COPY OF THE NOTICE DEMANDING AMOUNT RS. 31,20,562 DATED 28.11.2025 WERE GIVEN TO THE 1ST APPELLANT**
Annexure A3	**COPY OF THE RECEIPT DATED 29-03-2025**
Annexure A4	**COPY OF THE APPLICATION SUBMITTED BY ME BEFORE THE GOVERNMENT DATED 2-12-2025**