

(2026) 01 KL CK 1708
In the High Court Of Kerala
Case No : Writ Appeal No.3183 Of 2025

Authorised Officer South Indian Bank Ltd	APPELLANT
Vs	
Navas Sulaiman	RESPONDENT

Date of Decision : 22-01-2026

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Kerala High Court Act, 1958 — Section 5(i)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13, 13(2), 13(4), 14, 14(1), 17, 17(1)
Contract Act, 1872 — Section 62

Citation : (2026) 01 KL CK 1708

Hon'ble Judges : Anil K. Narendran, J; Muralee Krishna S., J

Bench : Division Bench

Advocate : Sunil Shanker, Vidya Gangadharan, Thomas Glaison, K.C.Sudheer

Final Decision : Allowed

Judgement

Anil K. Narendran, J

1. Respondents 1 and 2 in W.P.(C)No.45979 of 2025 have filed this writ appeal, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958, challenging the judgment dated 08.12.2025 of the learned Single Judge in that writ petition, which was one filed by the respondent herein-petitioner, invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ of mandamus commanding respondents 1 and 2 therein (appellants herein), namely, the Authorised Officer of South Indian Bank Ltd. and the Manager, South Indian Bank Ltd., Alappuzha Branch, to grant time till 31.03.2026 to the petitioner to clear off his liability in the loan accounts with the Bank. The document marked as Ext.P1 is a copy of notice dated 14.08.2024 issued by the Advocate Commissioner appointed by the Chief Judicial Magistrate, Alappuzha in M.C.No.434 of 2024, a petition filed by South Indian Bank Ltd., the secured creditor, invoking the provisions under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002 (SARFAESI Act), seeking assistance in taking possession of the secured asset. The petitioner along with his wife had earlier approached this Court in W.P. (C)No.18164 of 2024 aggrieved by the coercive steps initiated by the bank under the provisions of the SARFAESI Act in respect of various facilities availed for the proprietorship concern M/s.Oscar Publishing House as well as housing loans availed by his wife from Convent Square Branch of South Indian Bank Ltd. at Alappuzha. That writ petition was disposed of by Ext.P2 judgment dated 23.05.2024, whereby they were directed to remit the outstanding amount of Rs.1,25,58,646.12, as on 20.05.2024, in six consecutive and equal monthly installments, along with accruing interest and other bank charges and the first installment payable on or before 15.06.2024. In Ext.P2 judgment, it was made clear that if the petitioners therein commit a single default in making payment, as directed above, the respondents therein will be at liberty to continue with the coercive proceedings against them, in accordance with law. Exts.P3 to P7 receipts would show that the petitioners in W.P.(C)No.18164 of 2024, paid an amount of Rs.5,00,000/- on 01.11.2024, Rs.9,00,000/- on 11.12.2024, Rs.8,00,000/- on 07.07.2025, Rs.8,00,000/- on 29.08.2025 and Rs.7,00,000/- on 30.08.2025, amounting to a total sum of Rs.37,00,000/-. After committing default in payment of the outstanding amount in terms of the directions contained in paragraph 10 of Ext.P2 judgment, the appellant-petitioner, who was the 1st petitioner in W.P.(C)No.18164 of 2024, has chosen to file W.P. (C)No.45979 of 2025 seeking a writ of mandamus commanding the appellants herein to grant him time till 31.03.2026 to clear off his liability in the loan accounts with the Bank.

2. In W.P.(C)No.45979 of 2025, the respondents (appellants herein) have filed a counter affidavit dated 06.12.2025, opposing the relief sought for, producing therewith Ext.R1(a) letter dated 20.06.2025, whereby One Time Settlement (OTS) facility was extended by the Bank, based on the request dated 10.06.2025 made by the petitioners in W.P.(C)No.18164 of 2024.

3. On 08.12.2025, when W.P.(C)No.45979 of 2025 came up for consideration, the learned Single Judge disposed of the same with the directions contained in paragraph 5 of that judgment. Paragraphs 4, 5 and also the last paragraph of that judgment read thus;

"4. Heard the learned Counsel on both sides.

5. Since the limited relief of the petitioner is only to allow him to approach the Debts Recovery Tribunal to avail the statutory remedy, this Court deems it appropriate to dispose of this writ petition directing the petitioner to remit Rs.15 Lakhs on or before 22.12.2025 and the coercive proceedings against him shall be deferred till 24.12.2025.

The writ petition is disposed of with the above direction."

4. The judgment dated 08.12.2025 of the learned Single Judge is under challenge in this writ appeal filed by the respondents in W.P.(C)No.45979 of

2025. In the writ appeal, it is contended that, in view of the admitted non-compliance of Ext.P2 judgment in W.P.(C)No.18164 of 2024, the respondent herein is not entitled to any consideration in equity in the subsequent writ petition, i.e., W.P.(C)No.45979 of 2025. In support of that contention, the appellants would place reliance on the decision of the Apex Court in *Prestige Lights Ltd. v. State Bank of India* [(2007) 8 SCC 449]. Further, the relief sought for in W.P.(C)No.45979 of 2025 is not in relation to discharge of any public function by the Bank and therefore the writ petition is not maintainable in law. In support of the said contention, the appellants would place reliance on the decision of the Apex Court in *Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir* [(2022) 5 SCC 345] and *Federal Bank Ltd. v. Sagar Thomas* [(2003) 10 SCC 733]. On the maintainability of a writ petition under Article 226 of the Constitution of India challenging the measures taken by the secured creditor under the provisions of the SARFAESI Act, in view of statutory remedy provided under Section 17 of the said Act, the appellants would place reliance on the decisions of the Apex Court in *United Bank of India v. Satyavati Tandon* [(2010) 8 SCC 110], *South Indian Bank Ltd. v. Naveen Mathew Philip* [(2023) 17 SCC 311], etc.

5. On 19.12.2025, when this writ appeal came up for admission, it was admitted on file. Urgent notice by speed post was ordered to respondent-petitioner, returnable within three weeks. This Court granted an interim order dated 19.12.2025. Paragraphs 3 to 6 of that order read thus;

"3. The learned counsel for the appellants-respondents in W.P.(C)No.45979 of 2025 would point out that the only relief sought for in the writ petition is a writ of mandamus commanding respondents 1 and 2 to grant time till 31.03.2026 to clear off the dues in the loan account. The document marked as Ext.P1 is a notice dated 14.08.2024 issued by the Advocate Commissioner appointed by the Chief Judicial Magistrate Court, Alappuzha, in M.C.No.434 of 2024. Ext.P2 is a copy of the judgment dated 23.05.2024 of the learned Single Judge in W.P.(C)No.18164 of 2024, whereby the petitioners were granted instalment facility to clear the outstanding of Rs.1,25,58,646.12 in six consecutive equal monthly instalments along with accrued interest and bank charges commencing from 15.06.2024. The respondent-petitioner could not clear the dues in terms of the directions contained in Ext.P2 judgment, though certain payments were made.

4. The learned counsel has pointed out the specific contentions raised in the counter affidavit dated 06.12.2025 filed by the respondents in W.P.(C)No.45979 of 2025, wherein the question of maintainability of the writ petition was also raised, pointing out that the total liability as on 05.12.2025 comes to Rs.1,21,11,478.03/-along with further interests, costs and charges.

5. In the aforesaid circumstances, we find that the appellants have made out a prima facie case for staying the operation of the directions contained in paragraph 5 of the judgment dated 08.12.2025 in W.P.(C)No.45979 of 2025, which reads thus;

"Since the limited relief of the petitioner is only to allow him to approach the Debts Recovery Tribunal to avail the statutory remedy, this Court deems it appropriate to dispose of this writ petition directing the petitioner to remit Rs.15 Lakhs on or before 22.12.2025 and the coercive proceedings against him shall be deferred till 24.12.2025."

6. In such circumstances, there will be an interim stay of operation of the direction contained in paragraph 5 of the judgment dated 08.12.2025 of the learned Single Judge to defer coercive measures against the respondents-petitioners, for a period of one month."

6. The interim order granted on 19.12.2025 was extended for a period of one month, by the order dated 16.01.2026.

7. We heard arguments of the learned counsel for the appellants-respondents and also the learned counsel for respondent-petitioner.

8. The learned counsel for the appellants-respondents would contend that the judgment dated 08.12.2025 of the learned Single Judge in W.P.(C)No.45979 of 2025 is one rendered without taking note of the legal and factual contentions raised by the respondents on the maintainability of the writ petition as well as dis-entitlement of the petitioner to any consideration in equity, in view of the admitted non-compliance of the directions contained in Ext.P2 judgment dated 23.05.2024 in W.P.(C)No.18164 of 2024. The learned Single Judge committed a grave error in interfering with the coercive steps taken by the Bank, while disposing of the writ petition by the impugned judgment dated 08.12.2025, despite the fact that on account of the default committed by the petitioner and his wife in complying with the conditions in Annexure R1(a) letter dated 20.06.2025, the OTS facility was automatically cancelled. The learned counsel for the appellants would point out that the wife of the respondent-petitioner has already approached the Debts Recovery Tribunal-2, Ernakulam in S.A.No.4 of 2026, invoking the provisions under Section 17 of the SARFAESI Act, which is now pending consideration.

9. The learned counsel for the respondent-petitioner would contend that by the impugned judgment dated 08.12.2025, the learned Single Judge has only granted a breathing time to the petitioner to avail the statutory remedy, by approaching the Debts Recovery Tribunal. Therefore, no serious prejudice is caused to the appellants on account of the directions contained in the said judgment dated 08.12.2025.

10. 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 the process does not conform to the law or the statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation. A question as to whether such a violation would be over a mandatory prescription as against a discretionary one is primarily within the domain of the Tribunal. The issues governing waiver, acquiescence and estoppel are also primarily within the domain of the Tribunal. The object and reasons behind the SARFAESI Act are very clear as observed in *Mardia Chemicals Ltd. v. Union of India* [(2004) 4 SCC 311]. While it facilitates a faster and smoother mode of recovery sans any interference from the court, it does provide a fair mechanism in the form of the Tribunal being manned by a legally trained mind. The Tribunal is clothed with a wide range of powers to set aside an illegal order, and thereafter, grant consequential reliefs, including repossession and payment of compensation and costs. Section 17(1) of the SARFAESI Act gives an expansive meaning to the expression 'any person', who could approach the Tribunal.

11. 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.

12. In the instant case, the respondents in W.P.(C)No. 45979 of 2025 (appellants herein) have filed a counter affidavit dated 06.12.2025 in that writ petition raising a specific contention that the writ petition is not maintainable in view of the law laid down by the Apex Court in Mathew K.C. [(2018) 3 SCC 85], Naveen Mathew Philip [(2023) 17 SCC 311], Satyawati Tondon [(2010) 8 SCC 110], Phoenix ARC (P) Ltd. [(2022) 5 SCC 345], etc. It was also pointed out that since the petitioners in W.P.(C)No.18164 of 2024 defaulted payment in terms of the directions contained in Ext.P2 judgment, the Bank moved the Chief Judicial Magistrate, Alappuzha in M.C.No.434 of 2024 (invoking the provisions under Section 14 of the SARFAESI Act) and the Advocate Commissioner appointed in that proceedings issued Ext.P1 notice dated 14.08.2024 to take possession of the property. In paragraph 3 of the impugned judgment dated 08.12.2025, the learned Single Judge noticed the above contentions raised by the learned counsel for the Bank. Paragraph 3 of the judgment dated 08.12.2025 reads thus;

"3. The learned Counsel for the respondent Bank has filed a counter affidavit, wherein it is contended that the writ petition is not maintainable in view of the decision of the Apex Court in South Indian Bank Ltd. v. Naveen Mathew Philip [(2023) 17 SCC 311]. It is also submitted that the petitioner has already approached this Court and obtained Ext.P2 judgment, which is not complied with and thereafter, the Bank moved the Chief Judicial Magistrate with M.C.No.434 of 2024, wherein the Advocate Commissioner has issued a notice to take physical possession of the property of the petitioner. In the meanwhile, a proposal was submitted for One Time Settlement, which was accepted by the Bank, but the petitioner failed to comply with the said condition and now possession is sought to be taken tomorrow. The learned Standing Counsel submits that the petitioner does not intend to remit any amount and only seeks to prolong the litigation and defer the coercive proceedings against him and prays that such a person cannot be given any indulgence by this Court."

13. 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.

14. 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.

15. 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.

16. 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 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. 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 the remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

17. 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 respondent-petitioner has any grievance against the proceedings initiated by the secured creditor under Section 14 of the SARFAESI Act, he could have availed the statutory remedy by filing an application under Section 17 of the said Act before the Debts Recovery Tribunal. 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.

18. When the remedy available to an aggrieved person under Section 17 of the

SARFAESI Act is 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.

19. In the instant case, as already noticed hereinbefore, the only relief sought for by the respondent-petitioner in W.P.(C)No.45979 of 2025 was a writ of mandamus commanding respondents 1 and 2 therein (appellants herein) to grant time till 31.03.2026 to the petitioner to clear off his liability in the loan accounts with the Bank. The petitioner along with his wife had earlier approached this Court in W.P.(C)No.18164 of 2024 aggrieved by the coercive steps initiated by the Bank under the provisions of the SARFAESI Act in respect of various facilities availed for the proprietorship concern M/s.Oscar Publishing House as well as housing loans availed by his wife from Convent Square Branch of South Indian Bank Ltd. at Alappuzha.

20. By Ext.P2 judgment dated 23.05.2024 of the learned Single Judge, W.P.(C)No.18164 of 2024 was disposed of, whereby the petitioners therein (the respondent herein and his wife) were directed to remit the outstanding amount of Rs.1,25,58,646.12, as on 20.05.2024, in six consecutive and equal monthly installments, along with accruing interest and other bank charges and the first installment payable on or before 15.06.2024. As made clear in Ext.P2 judgment, if the petitioners therein commit a single default in making payment, as directed in that judgment, the respondents therein (appellants herein) will be at liberty to continue with the coercive proceedings initiated against them, in accordance with law.

21. Since there was default on the part of the petitioners in W.P.(C)No.18164 of 2024 in remitting the outstanding amount of Rs.1,25,58,646.12, as on 20.05.2024, in six consecutive and equal monthly installments, along with accruing interest and other bank charges, within the time limit stipulated in Ext.P2 judgment, as per the default clause in the said judgment, the Bank continued with the coercive proceedings, which had resulted in the issuance of Ext.P1 notice dated 14.08.2024 issued by the Advocate Commissioner appointed by the Chief Judicial Magistrate, Alappuzha in M.C.No.434 of 2024, in a petition filed by the Bank invoking the provisions under Section 14 of the SARFAESI Act, seeking assistance in taking physical possession of the secured asset. Ext.P1 notice is one issued by the Advocate Commissioner about two months after 15.06.2024, the date fixed in Ext.P2 judgment for payment of the first installment. It is after the receipt of Ext.P1 notice dated 14.08.2024, the petitioners in W.P.(C)No.18164 of 2024 paid an amount of Rs.5,00,000/- on 01.11.2024, Rs.9,00,000/- on 11.12.2024, Rs.8,00,000/- on 07.07.2025, Rs.8,00,000/- on 29.08.2025 and Rs.7,00,000/- on 30.08.2025, amounting to a

total sum of Rs.37,00,000/-, as evidenced by Exts.P3 to P7 receipts produced along with W.P.(C)No.45979 of 2025, against the outstanding amount of Rs.1,25,58,646.12 as on 20.05.2024.

22. In the counter affidavit filed by the respondents in W.P.(C)No.45979 of 2025, it was pointed out that the continuance of the credit facilities as NPA will cause severe prejudice to the bank, as provisioning requires banks to set aside capital based on asset quality, as per the guidelines issued by the Reserve Bank of India.

23. In *Authorised Officer, State Bank of Travancore v. Mathew K.C.* [2018 (1) KLT 784], the Apex Court held that no writ petition would lie against the proceedings under the SARFAESI Act, in view of the statutory remedy available under the said Act.

24. In *Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir* [(2022) 5 SCC 345] the Apex Court was dealing with a case in which Phoenix ARC (P) Ltd. (for brevity 'ARC'), which is a private financial institution, proposed to take action under the SARFAESI Act to recover the borrowed amount as a secured creditor. The Apex Court held that ARC as such cannot be said to be performing public functions which are normally expected to be performed by State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lends money to the borrowers and the said activity of the bank/ARC cannot be said to be as performing a public function, which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken, and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, he has to avail the remedy under the SARFESI Act, and no writ petition would lie and/or is maintainable and/or entertainable.

25. In *Sobha S. v. Muthoot Finance Limited* [2025 (2) KHC 229], the Apex Court considered the question of maintainability of writ petitions under Article 226 of the Constitution of India against a private non-banking financial company and also a private company carrying on banking business as a Scheduled Bank. In the said case, the Apex Court held that a private company carrying on banking business as a Scheduled Bank cannot be termed as a company carrying on any public function or public duty. Merely because a Statute or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.

26. In the instant case, the only relief sought for by the respondent-petitioner in W.P.(C)No.45979 of 2025 was a writ of mandamus commanding respondents 1 and 2 therein (appellants herein) to grant time till 31.03.2026 to the petitioner to clear off his liability in the loan accounts with the Bank. Admittedly, South Indian Bank Ltd. is a private company carrying on banking business as a Scheduled Bank. In view of the law laid down by the Apex Court in *Phoenix ARC (P) Ltd.* [(2022) 5 SCC 345] and *Sobha S.* [2025 (2) KHC 229], during the course of a commercial transaction and under the contract, South Indian Bank Ltd. lend

money to the borrowers and the said activity of the bank cannot be said to be as performing a public function, which is normally expected to be performed by the State authorities. If proceedings are initiated by the said bank under the provisions of the SARFAESI Act and the borrower or the guarantor or any other person is affected by the action taken by the bank, he has to avail the statutory remedy provided under Section 17 of the SARFESI Act, and no writ petition would lie, maintainable or entertainable under Article 226 of the Constitution of India. The legal contentions on the question of maintainability of W.P. (C)No.45979 of 2025 raised in the counter affidavit dated 06.12.2025 filed by the respondents (appellants herein), were not dealt with by the learned Single Judge, while disposing of that writ petition by the impugned judgment dated 08.12.2025, with a direction to defer the coercive proceedings against the petitioner till 24.12.2025, on remittance of an amount of Rs.15,00,000/- on or before 21.12.2025.

27. By Ext.R1(a) letter dated 20.06.2025, the Bank granted OTS facility on payment of an amount of Rs.1,27,00,000/- in respect of various facilities availed for the proprietorship concern, M/s.Oscar Publishing House as well as housing loans availed by the petitioner's wife from Convent Square Branch of South Indian Bank Ltd. at Alappuzha., subject to the terms and conditions stipulated in that letter, whereby a payment of Rs.10,00,000/- has to be made on or before 30.06.2025, Rs.25,00,000/- on or before 31.07.2025, and Rs.92,00,000/- on or before 31.08.2025. The said letter also provides for debt settlement terms to be executed by all the parties, in terms of the compromise arrived.

28. In paragraph 10 of the counter affidavit filed by the respondents in W.P. (C)No.45979 of 2025, it is stated that the petitioner failed to comply with the stipulated conditions, and the OTS was automatically cancelled. In paragraph 11 of the counter affidavit, it is stated that subsequently the Advocate Commissioner along with other Bank officials attempted to take physical possession of the secured asset on 25.11.2025. Aggrieved by that action, the petitioner has approached this Court on 05.12.2025, by filing W.P.(C)No.45979 of 2025. As on 05.12.2025, an amount of Rs.38,61,478.07 is due under the credit facilities availed by M/s.Oscar Publishing House and Rs.82,49,999.96 under the credit facilities availed by the petitioner's wife. Thus, a total amount of Rs.1,21,11,478.03 along with further interest, cost and charges is due from all the credit facilities availed by the borrowers.

29. In the counter affidavit filed by the respondents in W.P.(C)No.45979 of 2025, it is stated that due to the default committed by the borrowers, the credit facilities were classified as Non-Performing Asset (NPA) on 08.11.2023 and 14.11.2023 respectively. Demand notices dated 27.12.2023 were issued under the provisions of Section 13(2) of the SARFAESI Act. Since the liability was not discharged, the Bank proceeded with the matter further. Possession notice dated 09.05.2024, issued by the Bank was under challenge in W.P.(C)No.18164 of 2024. The petitioner and his wife failed to comply with the conditions stipulated

in Ext.P2 judgment dated 23.05.2024. Therefore, the Bank initiated proceedings under Section 14 of the SARFAESI Act and the Advocate Commissioner appointed by the Chief Judicial Magistrate, Alappuzha in M.C.No.434 of 2024 issued Ext.P1 notice dated 14.08.2024. The payments evidenced by Exts.P3 to P7 receipts were made by the petitioners in W.P.(C)No.18164 of 2024 only after the issuance of Ext.P1 notice.

30. 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.

31. 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.

32. In paragraph 2 of the impugned judgment dated 08.12.2025 in W.P.(C)No.45979 of 2025, the learned Single Judge noticed the submission made by the learned counsel for the bank that the petitioner has defaulted payment as per the OTS benefit extended by the bank vide Ext.R1(a) letter dated 20.06.2025. Instead of paying a total sum of Rs.35,00,000/- on or before 31.07.2025, the total payment made was only Rs.23,00,000/-. The learned Single Judge has also noticed the prayer of the petitioner that he may be given a breathing time to approach the Debts Recovery Tribunal to challenge the proceedings against him. Paragraph 2 of the judgment dated 08.12.2025 read thus;

"2. The learned Counsel for the respondent Bank, on instructions, submitted that the petitioner has not complied with the directions in Ext.P2 judgment, but later he approached the Bank with a proposal for One Time Settlement (OTS), which was duly replied by Ext.R1(a) fixing the amount as Rs.1,27,00,000/- and the petitioner was directed to remit Rs.10 Lakhs on or before 30.06.2025, Rs.25

Lakhs on or before 31.07.2025 and Rs.92 Lakhs on or before 31.08.2025. It is seen that the petitioner had remitted only Rs.8 Lakhs on 07.07.2025, another Rs.8 Lakhs on 29.08.2025 and Rs.7 Lakhs on 30.08.2025. When added up, the said amount would come to Rs.23 Lakhs only. As per the OTS proposal, the petitioner ought to have paid Rs.35 Lakhs on or before 31.07.2025. The prayer now sought for is that he may be given a breathing time to approach the DRT and to challenge the proceedings against him.”

33. The learned counsel for the Bank would point out that S.A.No.4 of 2026 filed by the wife of the respondent-petitioner is now pending consideration before the Debts Recovery Tribunal-2, Ernakulam.

34. As stated in the counter affidavit filed by the respondents in W.P.(C)No.45979 of 2025, though the Bank vide Ext.R1(a) letter dated 20.06.2025 granted OTS facility to the petitioners in W.P.(C)No.18164 of 2024, on payment of an amount of Rs.1,27,00,000/- in respect of various facilities availed for the proprietorship concern M/s.Oscar Publishing House as well as housing loans availed by the petitioner’s wife from Convent Square Branch of South Indian Bank Ltd. at Alappuzha, subject to the terms and conditions stipulated in that letter and execution of debt settlement terms by all the parties, in terms of the compromise arrived, the petitioner failed to comply with the stipulated conditions, and the OTS was automatically cancelled. Therefore, the petitioner is not legally entitled to claim the benefit of OTS facility sanctioned vide Ext.R1(a) letter dated 20.06.2025.

35. As stated in the counter affidavit filed by the respondents in W.P.(C)No.45979 of 2025, due to the default committed by the borrowers, the accounts were classified as NPA in November, 2023. Challenging the possession notice dated 09.05.2024, the borrowers had approached this Court in W.P.(C)No.18164 of 2024, which was disposed of by Ext.P2 judgment dated 23.05.2024. They defaulted remittance of the outstanding amounts of Rs.1,25,58,646.12 as on 20.05.2025, along with accruing interest and other bank charges within the time limit stipulated in Ext.P2 judgment. As per the default clause in Ext.P2 judgment, the Bank continued with the coercive proceedings which had resulted in the issuance of Ext.P1 notice dated 14.08.2024 issued by the Advocate Commissioner appointed by the Chief Judicial Magistrate, Alappuzha in M.C.No.434 of 2024, in a petition filed by the Bank under Section 14 of the SARFAESI Act. In the absence of a valid challenge against the measures taken by the Bank under Section 13 or Section 14 of the SARFAESI Act, the learned Single Judge went wrong in disposing of W.P.(C)No.45979 of 2025 with a direction that the coercive proceedings against the petitioner shall be deferred till 24.12.2025, on the petitioner remitting a sum of Rs.15,00,000/- on or before 22.12.2025, especially when such coercive proceedings were initiated as per the default clause in Ext.P2 judgment dated 23.05.2024 in W.P.(C)No.18164 of 2024, since not even a single payment towards the outstanding amount was made by the petitioner and his wife, who were the petitioners therein, within the time limit

stipulated in that judgment.

36. In the above circumstances, we find no reason to sustain the impugned judgment dated 08.12.2025 of the learned Single Judge in W.P.(C)No.45979 of 2025, which was one rendered without adverting to the legal contention raised by the appellants herein on the maintainability of the writ petition, placing reliance on the decisions of the Apex Court in Satyawati Tondon [(2010) 8 SCC 110], Mathew K.C. [(2018) 3 SCC 85], Naveen Mathew Philip [(2023) 17 SCC 311], Phoenix ARC (P) Ltd. [(2022) 5 SCC 345] and Sobha S. [2025 (2) KHC 229].

In the result, this writ appeal is allowed by setting aside the judgment dated 08.12.2025 of the learned Single Judge in W.P.(C)No.45979 of 2025 and that writ petition is dismissed on the ground of maintainability.