

(2025) 10 KL CK 1286
In the High Court Of Kerala
Case No : Writ Petition (Civil).19544 of 2025

Binu Vincent

APPELLANT

Vs

Federal Bank Ltd

RESPONDENT

Date of Decision : 09-10-2025

Acts Referred:

Constitution of India, 1950 — Article 12, 136, 226, 300ACode of Civil Procedure, 1908 - Section 11Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - Section 19(22), 24, 25, 29, 30, 31Income Tax Act, 1961 - Section 245IIncome Tax Rules 1962 - Rule 68B

Citation : (2025) 10 KL CK 1286

Hon'ble Judges : Mohammed Nias C.P., J

Bench : Single Bench

Advocate : Titus Mani Vettom, P.A.Jacob, Binny Thomas, Swaroop A.P., Pranoy K.Kottaram, Arun Thomas, George Mathews, Sivaraman P.L, Athul Babu, Cisly Grashious, Sreenand Udayan, Grashious Kuriakose, S.Kabeer, Mohan Jacob George

Final Decision : Dismissed

Judgement

Mohammed Nias C.P., J.

1. The petitioners contend that the 1st petitioner, as principal borrower, had availed a loan of Rs. 5,00,000/- (Rupees five lakhs only) from the 1st respondent bank, which was later enhanced to Rs. 20,00,000/- Rupees Twenty Lakhs only) under an OD-CC (Over Draft-Cash Credit) account, with the 2nd petitioner and M.A. Vincent, Lincy Binu and T.S. Joseph as co-obligants. T.S.Joseph again availed an Agricultural Medium Term Loan (AMTL) of Rs. 2,75,000/- (Rupees Two Lakhs Seventy-Five Thousand Only) and the Federal Kisan Credit (FKC) of Rs. 85,000/- (Rupees Eighty-Five Thousand Only).

1.1. Apart from the two items of property (27 cents & 28 cents of land) extended by the 1st petitioner as collateral security, property (3 acres) belonging to T.S. Joseph was also mortgaged to cover the 1st petitioner's liability. The liability

under the account fell into arrears by January 2005, and, upon proceedings initiated before the Debt Recovery Tribunal, Ernakulam, in O.A. No. 31 of 2006, Ext. P1 Recovery Certificate dated 11.01.2012 was issued for the recovery of Rs. 76,90,252.22/- (Rupees Seventy-Six Lakh Ninety Thousand Two Hundred Fifty-Two Only) from the properties described in Schedules A to C therein.

1.2. The petitioners submit that the Recovery Officer issued Ext.P2 sale proclamation only on 24.05.2016, and the sale proclamation contained one more additional item of property which is a parcel of land having an extent of 5 Acre 2 cents and this property was not included in the Recovery certificate, which was challenged before the DRT in Appeal No. 5/2016 and before DRAT in M.A.24/2019 and before this court in W.P(C) No. 16681/2022 and W.A. No. 1352/2024, raising the issue on different grounds and they failed to obtain any favourable orders.

1.3. Thereafter, an auction sale was conducted on 25.07.2016, wherein respondents 3 and 4 purchased items 3 and 2, for an amount of Rs. 75.6 lakhs and Rs. 30.2 lakhs, respectively. Advocate Commissioner was appointed by Ext. P3 order dated 27.03.2025, and the property was handed over to the auction purchasers on 11.04.2025. It is contended that the proclamation and auction were issued and conducted long after the expiry of the statutory limitation under Rule 68B of the Second Schedule to the Income Tax Act, 1961, (hereinafter "IT Act") which, by virtue of Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, (hereinafter "the RDDB Act") applies to recovery proceedings under the said Act. The said provision mandates that no sale of immovable property shall be made after the expiry of three years from the end of the financial year in which the order giving rise to the demand became conclusive.

1.4. The petitioners point out that the Recovery Certificate, having been issued on 11.01.2012, the financial year ended on 31.03.2012, and the three-year period expired on 31.03.2015. The proclamation of sale issued on 24.05.2016 and the auction conducted on 25.07.2016 were therefore more than one year beyond the statutory limit, rendering them illegal and void. The petitioners contend that the filing of Appeal No. 5/2016 before the DRT under Section 30 of the RDDB Act on 11.07.2016 would not have the effect of extending or excluding the limitation, since it was filed after the expiry of the period prescribed in Rule 68B.

1.5. It is further urged that the provision is mandatory in nature, as held by the Division Bench of this Court in *Ratheesh M. N. & Anr. v. Debt Recovery Tribunal (Kerala & Lakshadweep) and Others* [2019 (2) KHC 134], wherein it was categorically declared that sales effected beyond the period stipulated under Rule 68B are illegal and void. Reliance is also placed on *C.N. Paramsivam & Anr. v. Sunrise Plaza & Ors.* [2013 (9) SCC 460], where the Hon'ble Supreme Court reiterated that a sale in violation of statutory requirements is a nullity in law.

1.6. The petitioners also cite the decisions in Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Co-operative Housing Society & Ors. [(2013) 5 SCC 427] to contend that if a proceeding is void ab initio, it is inoperative, nugatory and without legal force; and can be ignored even in collateral proceedings, and there is no requirement to formally set it aside. Consequently, all proceedings and orders rooted in the ownership rights claimed under the auction are also nullities in the eyes of law. The petitioners also rely on Shree Chamundi Mopeds Ltd v. Church of South India Trust Association, CSI Cinod Secretariat, Madras (1992 3 SCC), to contend that principles in Ratheesh (supra) will have to be followed despite the Apex Court staying the operation of the judgment.

1.7. The petitioners submit that the acts impugned violate Article 300A of the Constitution of India, which mandates that no person shall be deprived of his property save by authority of law. The 2nd respondent, Recovery Officer, in the discharge of his statutory duties, was bound to act strictly in accordance with law and in a fair manner, and his failure to do so renders his actions amenable to the writ jurisdiction of this Court.

1.8. In the above circumstances the petitioners pray to declare that Ext.P2 sale proclamation and the auction conducted under the same is illegal, void and non est and all continuation orders, proceedings and actions following the auction are also void and to set aside the sale certificates issued to respondents 3 & 4, and direct reversal of all consequential revenue records and mutations made in their favour.

2. The 1st respondent, Federal Bank Ltd, in the counter affidavit, contends that the writ petition is not maintainable either in law or on the facts. It is submitted that the 1st respondent is a private bank and not an authority or instrumentality of the State within the meaning of Article 12 of the Constitution of India, and hence not amenable to the writ jurisdiction of this Court. Reliance is placed on the judgment of the Hon'ble Supreme Court in Federal Bank Limited v. Sagar Thomas [(2003) 10 SCC 733], wherein it has been categorically held that the Federal Bank is not a State under Article 12.

2.1. It is further contended that the present writ petition is a gross abuse of the process of law. The recovery process is now challenged pursuant to Ext. R1(b) award passed by the Lok Adalath in O.A. No. 31 of 2006 before the Debts Recovery Tribunal, Ernakulam, which was signed by the petitioners on consent. On default in complying with the award, the bank initiated recovery through Securitisation measures and by issuance of a Recovery Certificate. Pursuant thereto, the Recovery Officer issued a demand notice on 12.03.2012, followed by Ext. R1 (d) notice for settling the sale proclamation on 09.03.2015 and Ext.R1(e) attachment order dated 02.02.2015. The sale proclamation was issued on 24.05.2016 as evidenced by Exhibit R1(f). Against the Securitisation proceedings, the father of the petitioner had approached the DRT by filing S.A. No. 520/2012.

2.2. It is pointed out that the petitioners had challenged the sale notice by filing Appeal No. 5 of 2016 before the DRT, Ernakulam, which was later renumbered as Transfer Appeal No. 1 of 2017 and dismissed by Ext.R1(i) order dated 31.07.2018. Against the said dismissal, the petitioners approached this Court in W.P.(C) No. 26972 of 2018, which was disposed of, directing them to avail the remedy before DRAT, Chennai. The DRAT dismissed their appeal on 12.05.2022. The petitioners also filed W.P.(C) No. 40389 of 2018, which was dismissed on 03.01.2019 vide Ext. R1(k).

2.3. It is further submitted that W.P.(C) No. 16681 of 2022 filed by the petitioners challenging the DRAT order was dismissed by this Court on 25.07.2024 vide Ext. R1(m), and the Writ Appeal No. 1352 of 2024 preferred by them was also dismissed on 08.10.2024 vide Ext.R1(n). In the meantime, the property sold in the auction was registered in the name of the auction purchasers, and possession was delivered.

2.4. The plea now raised regarding Rule 68B of the Second Schedule to the Income Tax Act, 1961, is an afterthought, raised solely for the purpose of filing this writ petition. It is submitted that the law is well settled that the Limitation Act, 1963 applies to applications before the DRT, including execution proceedings before the Recovery Officer, by virtue of Section 24 of the RDDB Act, as held in *K. Kutaguptan v. Canara Bank* [MANU/KE/0834/2009], affirmed by the Division Bench reported in MANU/KE/1860/2017, and reiterated in the Ext. R1(q) judgment dated 06.07.2022 in W.P.(C) No. 13975 of 2022. The 1st respondent further relies on *Geevarghese P. John v. Federal Bank* [2024 KHC 7312], wherein this Court held that Rule 68B of the Second Schedule to the Income Tax Act does not apply to the recovery of amounts determined as payable to a bank under the RDDB Act. Thus, it is contended that all the actions of the bank are fully legal, and the writ petition is only to be dismissed.

2.5. The learned counsel for the 1st respondent bank relies on *Balvant N. Viswamitra and Ors. v. Yadav Sadashiv Mule (Dead) through LRS. and Ors.* [(2004) 8 SCC 706], *Rafique Bibi (Dead) by LRS. v. Sayed Waliuddin (Dead) by LRs and Ors.* [(2004) 1 SCC 287], *Tottempudi Salalith v. State Bank of India and Others* [(2024) 1 SCC 24].

3. The 3rd respondent, the auction purchaser of the property sold by the Recovery Officer, argues that the writ petition is belated and liable to be dismissed for laches. The challenge now raised could and ought to have been made in earlier proceedings before the DRT, DRAT, and this Court, all of which concerned the same parties and the same recovery proceedings. The petitioners, having failed in all early proceedings, cannot now raise this plea for the first time. The bar of constructive res judicata applies, as explained in *Celir LLP v. Sumati Prasad Bafna and Ors.* (MANU/SC/1343/2024). The petitioners are raising this particular issue after a period of 9 years from the proclamation of sale. It is a trite law that if there is an unexplained delay in filing a writ petition, the Court should decline to intervene and grant relief in exercise of its writ jurisdiction, as

explained by the Apex Court in *State of M.P.v Nandlal Jaiswal* [1986 KHC 708].

3.1. The 3rd respondent further states that the property was registered in its name on 23.12.2024, and possession was handed over. Substantial improvements worth about Rs. 30,00,000/- (Rupees Thirty lakhs only) were made thereafter, including fencing, labour mobilisation, pruning, purchase of fertilisers and equipment. The property is a tea plantation that had long been neglected, and improvements were necessary to restore and maintain it. Photographs evidencing the condition before and after improvements are produced. It is contended that allowing the petitioners' plea at this stage would cause grave prejudice to the 3rd respondent and undermine the sanctity of auction proceedings conducted by a competent authority in accordance with law.

3.2. On merits, it is submitted that there is no breach of Rule 68B. The attachment was on 02.02.2015 and the auction on 25.07.2016, which is within three years. Further, the time under Rule 68B runs from when the order giving rise to the demand becomes conclusive, which, in this case, was only after the dismissal of W.A. No. 1352 of 2024 on 08.10.2024. Moreover, by the amendment effective from 01.09.2019, the period in Rule 68B was extended from three years to seven years, and the sale completed before 2024 falls within this extended period.

3.3. The 3rd respondent relies on the decisions in *Nandlal Jaiswal* (supra), *Acre Polymers Private Limited v. M/s Alphine Pharmaceuticals Private Limited and Others* (2021 KHC 6783), *Forward Construction Co. v. Prabhat Mandal (Regd), Andheri* (1986 KHC 598).

4. Heard Sri. Titus Mani Vettom, the learned counsel for the petitioners, Sri.Mohan Jacob George, the learned counsel for the respondent bank, Sri Gracious Kuriakose, the learned Senior Counsel for the 3rd respondent, instructed by Sri. Pranoy K Kottaram and Sri. Arun Thomas for the 4th respondent.

4.1. The essential contention raised by the writ petitioners, challenging the sale dated 25.07.2016 conducted by the 1st respondent, Federal Bank, is that the sale is vitiated as it was effected beyond the period prescribed under Rule 68B of the Second Schedule to the Income Tax Act, 1961. Rule 68B of the Second Schedule of the Income Tax Act, 1961, is extracted below:

"Rule 68B of the Second Schedule of the Income Tax Act, 1961: Time limit for sale of attached immovable property:

68B. (1) No sale of immovable property shall be made under this Part after the expiry of three years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become conclusive under the provisions of section 245-I or, as the case may be, final in terms of the provisions of Chapter XX:

Provided that where the immovable property is required to be re-sold due to the amount of highest bid being less than the reserve price or under the circumstances mentioned in rule 57 or rule 58 or where the sale is set aside under rule 61, the aforesaid period of limitation for the sale of the immovable property shall stand extended by one year.

(2) In computing the period of limitation under sub-rule (1), the period—

(i) during which the levy of the aforesaid tax, interest, fine, penalty or any other sum is stayed by an order or injunction of any court; or

(ii) during which the proceedings of attachment or sale of the immovable property are stayed by an order or injunction of any court; or

(iii) commencing from the date of the presentation of any appeal against the order passed by the Tax Recovery Officer under this Schedule and ending on the day the appeal is decided, shall be excluded :

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation for the sale of the immovable property is less than 180 days, such remaining period shall be extended to 180 days, and the aforesaid period of limitation shall be deemed to be extended accordingly.

(3) Where any immovable property has been attached under this Part before the 1st day of June, 1992, and the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has also become conclusive or final before the said date, that date shall be deemed to be the date on which the said order has become conclusive or, as the case may be, final.

(4) Where the sale of immovable property is not made in accordance with the provisions of sub-rule (1), the attachment order in relation to the said property shall be deemed to have been vacated on the expiry of the time of limitation specified under this rule.”

4.2. While the petitioners rely on the judgment of the Hon’ble Supreme Court in C.N. Paramsivam (supra) and Ratheesh (supra), the 1st respondent relies on the judgment of this Court in K. Kutaguptan (supra), affirmed by the Division Bench as reported in MANU/KE/1860/2017, South Indian Bank Ltd. v. Recovery Officer (W.P.(C) No. 13975/2022) and Geevarghese (supra).

5. Going through the provisions, judgments rendered by the Supreme Court, this Court, and other High Courts, namely C.N. Paramsivam (supra), K. Kutaguptan (supra), South Indian Bank Ltd. (supra), Gheeverghese P. John v. Federal Bank (supra), Mitexo v. Canara Bank [MANU/MH/0668/2014], J.N. Krishnan v. Branch Manager, Canara Bank [2011 SCC OnLine Mad 828], and V. Chakrapani v. State Bank of India [AIR 2011 AP 27], it follows that the RDDB Act itself provides for attachment and sale of properties under Section 25 without prescribing any time limit, and importing Rule 68B would run contrary to this scheme. The references

in Rule 68B to "financial year," "finality under Section 245-I," and "Chapter XX" of the Income Tax Act are peculiar to tax recovery proceedings and wholly alien to the debt recovery mechanism under the RDDB Act. The incorporation of the Second and Third Schedules to the Income Tax Act through Section 29 is expressly qualified by the words "as far as possible" and "with necessary modifications," signifying that only those provisions which aid and facilitate recovery can be applied, not those which would stultify or defeat it. The provisions of the Income Tax Rules are therefore incorporated into recovery proceedings under the RDDB Act only to ensure procedural fairness and transparency in the actions of the Recovery Officer, to provide a structured framework and prevent arbitrariness, not to impose substantive restrictions.

5.1 The legislative object of the RDDB Act is to ensure speedy and effective recovery of debts due to banks and financial institutions; subjecting sales to a rigid three-year or four-year bar would frustrate that object. The RDDB Act is a self-contained code that provides its own framework for adjudication, issuance of recovery certificates, and execution by the Recovery Officer, and therefore, there is no statutory basis for importing any period of limitation from the Income Tax Rules. Yet another reason why Rule 68B cannot be read into the scheme of the RDDB Act is that Section 31, which provides for the transfer of pending cases, and the jurisdictional threshold under the Act, make no distinction in limitation based on the value of the claim. There is nothing in the Act to suggest that Parliament ever intended to prescribe different limitation periods for claims below Rs.10 lakhs and those above Rs. 10 lakhs; importing Rule 68B into the RDDB framework would therefore create inconsistencies and defeat procedural uniformity.

5.2. Moreover, the proceedings under the Income Tax Act are between the revenue and the assessee, where the Tax Recovery Officer functions as an employee of the State, whereas proceedings under the RDDB Act are adversarial in nature, adjudicated by an independent Tribunal, and executed by a Recovery Officer. The bank or financial institution has no control over the actions or administrative functioning of the Recovery Officer, and hence it would be highly unjust to preclude recovery merely because the Officer was unable to complete the sale within the time frame contemplated under Rule 68B. Delays may occur due to circumstances such as a vacancy in the office of the Recovery Officer, transfer of jurisdiction, administrative backlog, or even obstructive tactics by the debtor, factors beyond the creditor's control. To penalise the bank or financial institution for such procedural delays would defeat the purpose of the statute and unjustly enrich the defaulter.

5.3. It has, therefore, to be held that Rule 68B of the Second Schedule to the Income Tax Act, 1961, has no mandatory application to recovery proceedings under the RDDB Act. It is also relevant that under Sections 19(22) and 25 of the RDDB Act, the Recovery Officer derives jurisdiction to initiate recovery measures only after the recovery certificate attains finality. Hence, the time frame in Rule

68B, which is linked to the 'order giving rise to demand' under the Income Tax Act, cannot logically apply to proceedings initiated upon a recovery certificate under the RDDB Act. The consistent view emerging from the decisions of this Court and other High Courts is that Section 29 of the RDDB Act adopts the procedural framework of the Second and Third Schedules only to the extent they align with the object of expeditious recovery under the RDDB Act. The time limit of three years, later extended to four years and further to seven years, is merely directory and not mandatory, since Rule 68B imposes a duty upon the Recovery Officer but confers no corresponding right upon the debtor, nor prescribes any consequence for delay. The limitation applicable to recovery proceedings under Section 19 of the RDDB Act would, therefore, be governed by Article 136 of the Limitation Act, 1963, as recognised in *Gheeverghese P. John*. (supra).

5.4. It is to be noted that this Court, while rendering the judgment in *Ratheesh* (supra), did not consider the judgment of the Hon'ble Supreme Court in *C.N. Paramsivam* (supra) and the division bench judgment of this Court, *Kutaguptan* (supra), even though it was noticed. It was also held that under Rule 68B of the Second Schedule to the Income Tax Act, 1961, the limitation period for sale was extended from three to four years by Notification No. S.O. 164 (E) dated 1.03.1996, which has been in force since then, but the same was not noticed in *Ratheesh* (supra). Be that as it may, since the appeal against the judgment is still pending before the Apex Court, I deem it appropriate not to deal with the said judgment any further. Given the above, the contention of the petitioners that the sale is bad as it was conducted beyond the time granted in the provision concerned cannot be accepted, and the same is hereby rejected.

6. The next question that arises is, even assuming the sale was conducted beyond the time, can the petitioners urge that the entire actions are void. The learned counsel for the petitioners argues that if on the limitation aspect they succeed, the entire proceedings taken till now being void must be declared so. For this purpose, he relies on the judgments in *Chamundi Mopeds Ltd* (supra), *Govt. of A.P. and Others v. N. Rami Reddy* (AIR 2001 AP 226), *Subhash Sindhi Cooperative Housing Society* (supra). This is opposed by the learned Standing Counsel for the bank, contending that there is no question of the orders passed, as noticed above, being void, and there is no contention of lack of inherent authority to pass the orders impugned. Under such circumstances, even if they are found to be illegal, they cannot be said to be void. The illegal orders passed are to be correct in appeal, invoking the statutory scheme and not by challenging them as void. The petitioners, having failed in their attempts to challenge the actions of the secured creditor, cannot be allowed to contend that their actions are void at this distance of time. The learned counsel also relies on the following judgments: *Rafique Bibi* (supra), *Balvant* (supra).

6.1. The principle emerging from the decisions on the point, including those in *Rafique Bibi* (supra) and *Balvant* (supra), is that not every illegality or procedural irregularity renders a decree void or without jurisdiction. A decree becomes a

nullity only when it is passed by a court that inherently lacks jurisdiction over the subject matter or the parties, and such a lack of jurisdiction is apparent on the face of the record. Mere errors in the exercise of jurisdiction, including those arising from incorrect appreciation of law, limitation, or procedure, at best render the decree illegal or irregular, but not void. Such decrees must be challenged through appropriate appellate or review proceedings and cannot be collaterally attacked in execution or incidental proceedings.

6.2 The Supreme Court has underscored that decrees of competent courts, even if erroneous, retain their binding force unless set aside in due process, and that the executing court cannot go behind or invalidate such decrees on grounds of procedural or legal error. This distinction between a “void decree” and an “illegal decree” ensures finality of judicial decisions and prevents endless collateral challenges under the guise of jurisdictional defects. For these reasons, the contention that the entire actions are void has to be rejected, and I do so.

7. I also find considerable force in the argument of the learned Senior counsel for the auction purchaser, Sri. Gracious Kuriakose, that the writ petition is to be dismissed on the principles of delay and laches as the sale took place on 25.07.2016, and the challenge to that on this ground is made only on filing this writ petition as on 26.05.2025. Based on the decisions in *Arce Polymers (supra)*, *Nandlal Jaiswal (supra)* it is argued that the law on delay and laches is well settled that the jurisdiction under Article 226 being discretionary, relief can be declined where there is gross or unexplained delay, particularly when the petitioners have acquiesced in the action and allowed third-party rights or settled positions to come into existence; as held in *Nandlal Jaiswal (supra)*, if by the time the writ petition is filed the respondents have altered their position by investing substantial resources and acting on the impugned decision, the Court would not interfere since it would cause hardship and inequity, delay coupled with acquiescence disentitling the petitioners from any relief, save in cases of manifest illegality or violation of fundamental rights where delay is not an absolute bar; similarly, in *Arce Polymers (supra)*, the Supreme Court reiterated that equity aids the vigilant and not those who slumber over their rights, and where a borrower kept silent and permitted auction proceedings to culminate in transfer of property to bona fide third-party purchasers who had further invested, the challenge was barred by laches, since courts will not unsettle completed transactions or prejudice innocent third parties on account of belated claims.

7.1. The learned counsel also relied on the principles of *Celir LLP (supra)* and *Forward Construction Co. (supra)* which deal with the question of constructive res judicata, wherein it has been held that the doctrine, rooted in the Henderson Principle, embodies the broader concept of procedural fairness, judicial efficiency, and finality in litigation by mandating that all claims and issues which could and ought to have been raised in earlier proceedings must be raised therein, and failure to do so amounts to abuse of process. The Supreme Court in *Celir LLP*

(supra) explained that this doctrine, enshrined in Explanation VII to Section 11 of the CPC, is based on the maxim *interest reipublicae ut sit finis litium*—that in the interest of the State, there must be an end to litigation, and no party should be vexed twice for the same cause. It was further held that issues once raised and later abandoned are deemed waived and cannot be revived in subsequent proceedings, as such conduct undermines the finality of judgments and encourages strategic or vexatious litigation.

7.2. Similarly, in *Forward Construction Co.* (supra), the Court held that Explanation IV to Section 11 CPC deems any matter which might and ought to have been made a ground of attack or defence in a former suit as having been directly and substantially in issue therein, and that an adjudication is conclusive not only on matters actually decided but also on those which could have been litigated as part of the same controversy. Both decisions thus reaffirm that constructive *res judicata* bars re-litigation of matters that were or could have been raised earlier, thereby ensuring judicial efficiency, finality of adjudication, and preventing abuse of process.

Resultantly, and for all the reasons aforestated, the writ petition must fail on all counts and is dismissed.