

(2025) 08 KL CK 0847
In the High Court Of Kerala
Case No : Writ Appeal No. 2095 Of 2025

M/s Classic Agencies

APPELLANT

Vs

Regional Office, Indian Overseas Bank

RESPONDENT

Date of Decision : 27-08-2025

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Kerala High Court Act, 1958 — Section 5(i)

Citation : (2025) 08 KL CK 0847

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

Bench : Division Bench

Advocate : Dhananjay Deepak, Sunil Shankar

Final Decision : Dismissed

Judgement

Anil K. Narendran, J.

1. The appellants-petitioners filed W.P.(C)No.24490 of 2025 invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the 2nd respondent Indian Overseas Bank not to cancel the One Time Settlement (OTS) facility granted vide Ext.P2 sanction letter dated 26.12.2024 and to consider favourably the proposal made by the petitioners in Ext.P6 request dated 16.06.2025, for extending the timeline of the OTS facility sanctioned vide Ext.P2. The petitioners have also sought for a writ of mandamus commanding the respondents to keep in abeyance all coercive steps against the secured assets, till a decision is taken by Indian Overseas Bank on the proposal made in Ext.P6 request for extending the timeline of the OTS facility sanctioned vide Ext.P2.

2. Before the learned Single Judge, the learned Standing Counsel for Indian Overseas Bank filed a statement dated 17.07.2025, opposing the reliefs sought for. By the judgment dated 01.08.2025, the learned Single Judge disposed of the writ petition, taking note of the submission made by the learned Standing

Counsel for Indian Overseas Bank that the Bank has already taken a decision on the proposal made by the petitioners in Ext.P6 request. In the said judgment, the learned Single Judge directed the respondents to communicate the decision taken on Ext.P6 request within a week. To enable the petitioners to work out their remedies, it was ordered that no steps shall be taken by the Bank, against the petitioners, for a period of two weeks.

3. Feeling aggrieved by the judgment dated 01.08.2025 of the learned Single Judge in W.P.(C)No.24490 of 2025, the appellants-petitioners are before this Court in this writ appeal, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958.

4. Heard arguments of the learned counsel for the appellants-petitioners and the learned Standing Counsel for Indian Overseas Bank for the respondents.

5. The learned counsel for the appellants-petitioners would contend that since the appellants have made a total payment of Rs.1.19 Crores to the 2nd respondent Bank pursuant to the OTS facility sanctioned vide Ext.P2 sanction letter dated 26.12.2024, the learned Single Judge ought to have granted the reliefs sought for in W.P.(C)No.24490 of 2025. After the judgment of the learned Single Judge the appellants have been issued with Annexure A reply dated 14.08.2025, whereby their request in Ext.P6 for extending the timeline in the OTS facility granted vide Ext.P2 stands rejected.

6. On the other hand, the learned Standing Counsel for Indian Overseas Bank for the respondents would point out the specific contentions raised in the statement dated 17.07.2025 filed in W.P.(C)No.24490 of 2025 on the maintainability of the reliefs sought for in that writ petition.

7. 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.

8. 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.

9. By Ext.P2 sanction letter dated 26.12.2024, the appellants-petitioners were granted OTS facility, subject to the specific conditions stipulated therein. Condition No.4 of Ext.P2 sanction letter provides for automatic cancellation of OTS facility in the event non-fulfillment of the stipulated terms of sanction. Admittedly, the appellants could not fulfill the stipulated terms of Ext.P2 sanction letter. Therefore, in terms of Clause 4 of Ext.P2 sanction letter, the OTS facility sanctioned to the appellants stands cancelled automatically, with effect from the date of non-fulfillment of the stipulated terms of sanction.

10. 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 v. Meenal Agarwal* [(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 the OTS is always subject to eligibility criteria mentioned under the 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 financial institution/bank shall take a prudent decision whether to grant 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.

11. 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.

12. Viewed in the light of the law laid down by the Apex Court in *Bijnor Urban Cooperative Bank Limited* [(2023) 2 SCC 805] and *Arvindra Electronics Pvt. Ltd.* [(2023) 1 SCC 540], conclusion is irresistible that, invoking the writ jurisdiction under Article 226 of the Constitution of India, the appellants cannot seek a writ of mandamus, as sought for in W.P.(C)No. 24490 of 2025, commanding the Indian Overseas Bank not to cancel the OTS facility granted vide Ext.P2 sanction letter dated 26.12.2024 and to consider favourably the proposal made by them in Ext.P6 request dated 16.06.2025, for extending the timeline of the OTS facility sanctioned vide Ext.P2. In view of the law laid down by the Apex Court in *Naveen Mathew Philip* [(2023) 17 SCC 311], invoking the writ jurisdiction under Article 226 of the Constitution of India, the appellants cannot seek a writ of mandamus, commanding the respondents, to keep in abeyance all coercive steps against the secured assets, under the provisions of the SARFAESI Act, till a decision is taken by the Bank on the proposal made in Ext.P6 request for extending the timeline of the OTS facility sanctioned vide Ext.P2.

In the result, we find absolutely no grounds to entertain this writ appeal. The writ appeal fails and the same is accordingly dismissed.