

(2025) 12 KL CK 1833
In the High Court Of Kerala
Case No : Writ Appeal No.3095 Of 2025

M/s G.K. Granites

APPELLANT

Vs

Board Of Directors Of South Indian Bank Ltd

RESPONDENT

Date of Decision : 19-12-2025

Acts Referred:

Constitution of India, 1950 — Article 12, 141, 226
Code of Criminal Procedure 1898 — Section 369
Kerala High Court Act, 1958 — Section 5(i)
Chartered Accountants Act, 1949 — Section 21
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 13(4), 13(8), 14, 17(1), 26D
Security Interest (Enforcement) Rules, 2002 — Rule 8(6)

Citation : (2025) 12 KL CK 1833

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

Bench : Division Bench

Advocate : Maria Nedumpara, C.Ajithkumar, G.P. T.K.Vipindas, O.M.Shalina

Final Decision : Dismissed

Judgement

Anil K. Narendran, J

1. The appellant, a Micro, Small and Medium Enterprise (MSME) issued with Ext.P1 Udyam Certificate dated 24.03.2021 by the Ministry of Micro, Small and Medium Enterprises, Government of India, filed W.P.(C)No.46770 of 2025, invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking the following reliefs;

"a) To declare that the notification dated 29.05.2015, in unmistakable terms, declares that the MSME-borrower has no obligation to make an application for resolution of stress and, on the contrary, that banks and financial institutions are duty-bound to identify incipient stress based on the illustrative signs indicated in Annexure-I to the RBI Circular dated 17.03.2016; and further, that in any case where the bank has failed to identify incipient stress, it is duty-bound to classify the account as SMA-1 if the default is more than 31 days and as SMA-2 if the

default is more than 61 days, and thereafter shall constitute a Committee and make a reference to that Committee for resolution of stress; and further, that the Committee is empowered to permit recovery in terms of Para 5(3)(iv) if the resolution of stress is not feasible;

b) In furtherance of prayer (a) above, to declare that the judgments of the Supreme Court in *Pro Knits v. Canara Bank* [(2024) 10 SCC 292] and *Shree Shree Swami Samarth Construction v. The Board of Directors of NKGSB Co-op Bank* [2025 SCC OnLine SC 1566] were rendered per incuriam and sub silentio and will not bind the courts and tribunals in this country under Article 141 of the Constitution, inasmuch as- (i) in *Pro Knits*, the Court had, contrary to the letter and spirit of the notification, observed that if the MSME had allowed its account to be classified as NPA and for recovery action to be initiated, having failed to bring to the notice of the bank that it is an MSME supported by identifiable and verifiable documents, it cannot be allowed to "thwart" the SARFAESI action at a later stage; and (ii) in *Shree Shree Swami Samarth*, the Court observed that if the MSME had not even replied to the notice under Section 13(2) and claimed protection as an MSME supported by an affidavit, the recovery action cannot thereafter be challenged - which, to repeat, are contrary to the very letter as well as the spirit of the notification and have created a scenario where the said judgments have been instrumental in denying the benefit of the notification to MSMEs across the country.

c) To declare that the entire proceedings initiated by the Respondent against the Petitioners under Sections 13(2), 13(4) and 14 of the SARFAESI Act, are unconstitutional, illegal and void, being in violation of Paragraph 5(4)(iii) of the notification dated 29.5.2015 under the MSMED Act and without jurisdiction for more than one reason;

d) To issue a writ in the nature of certiorari or any other appropriate writ, order or direction, calling for the entire records and proceedings leading to the classification of the Petitioners' account as a Non-Performing Asset (NPA), the issuance of notices under Sections 13(2) and 13(4), and the order passed under Section 14 of the SARFAESI Act, 2002 as well as the records pertaining to the purported auctions conducted by the Respondent Bank.

e) to declare that insofar as the MSMED Act and the notification dated 29.05.2015 creates certain obligations and burden as against the Bank and certain rights and protection in favour of the MSME borrower in furtherance of larger public interest, and has not provided for any forum for the enforcement of the said inter se rights/adjudication of disputes, the Civil Court jurisdiction is not ousted;

f) To issue an order or direction, calling for the entire records and proceedings leading to the classification of the Petitioners' account as a Non-Performing Asset (NPA), the issuance of notices under Sections 13(2) and 13(4), and the order passed under Section 14 of the SARFAESI Act, 2002 as well as the records

pertaining to the purported auctions conducted by the Respondent Bank.

g) to declare that while the Respondent Bank is entitled to enforce all remedies available in law as against the Petitioner, common law, equitable or declaratory, it can only have one forum, and that it having instituted a suit in the DRT, the SARFAESI action is without jurisdiction and void;

h) To declare that the secured asset in question not having been registered with the Central Registry, the Respondent Bank is disentitled to enforce the same by invoking the SARFAESI Act and to quash and set aside the said action for the same reason; i) pass such further and other orders as the nature and circumstances of the case may require.

2. The interim reliefs sought for in W.P.(C)No.46770 of 2025 reads thus;

"a) Grant an ad-interim injunction restraining and prohibiting Banks and financial institutions from taking recourse to recovery of the amounts due from the petitioner/MSME under the SARFAESI Act, RDB Act, NI Act, IBC, etc., except in the manner contemplated under paragraph 5(4)(iii) of the notification;

b) Direct the respondent Bank to constitute committees for resolution of stress in the notification dated 29.05.2015, as also to the RBI to monitor the implementation of the same;

c) To restrain and prohibit the respondent Bank from confirming the auction and handing over the possession of the secured asset as also to restrain the auction purchaser from alienating the same or creating third party rights or in any manner dealing the same in case the auction has already been confirmed;

d) Pass any other order which the Hon'ble Court deems fit owing to the nature of the circumstances.

3. The notification dated 29.05.2015, referred to in the reliefs sought for in W.P. (C)No.46770 of 2025, i.e., Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises, issued by the 3rd respondent Ministry of Micro, Small and Medium Enterprises, Government of India, is marked as Ext.P2. A communication dated 17.03.2016 of the 9th respondent Reserve Bank of India, addressed to all Scheduled Commercial Banks (excluding Regional Rural Banks), enclosing therewith a copy of Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises, is marked as Ext.P3.

4. In the writ petition, it is alleged that South Indian Bank Ltd. did not heed the petitioner's plea not to classify its account as a Non-Performing Asset (NPA). The Bank classified the account of the petitioner as NPA and invoked the provisions under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), without following the mandatory procedure prescribed by Exts.P2 and P3, to ascertain the possibility of revival of the MSME Enterprise facing financial stress, or to restructure the loan, including providing additional financial assets.

5. The document marked as Ext.P6 is a copy of a representation dated 12.06.2024, stated to have been made by the petitioner, to the Senior Manager of South Indian Bank Ltd., Angamaly North Branch, with a request for restructuring the loan account and extension of MSME support. Ext.P6 representation does not even contain the details of the financial assistance/facilities availed by the petitioner. Ext.P7 is a copy of notice dated 02.08.2024 issued by the 2nd respondent Authorised Officer of South Indian Bank Ltd, under Section 13(2) of SARFAESI Act, in respect of the financial assistance/facilities extended to the petitioner, M/s.G.K.Granites, a partnership firm represented by its partners.

6. As per Ext.P7 notice, the accounts of the petitioner with Angamaly North Branch of South Indian Bank Ltd. are classified as NPA, on 26.06.2024. The total liability of the petitioner and its partners, in respect of the financial assistance/facilities availed from the Bank, as on 01.08.2024, was (i) Rs.4,23,32,455.86, (ii) Rs.10,15,62,234.88 and (iii) Rs.3,68,13,655.49, with future interest at the rate of 17.79% per annum, with monthly rests and applicable penal interest/penal charges from 01.08.2024. Ext.P7 notice was followed by Ext.P8 sale notice dated 06.12.2024 issued under Section 13(8) of the SARFAESI Act, read with Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 and Ext.P9 e-auction sale notice dated 17.10.2025.

7. On 12.12.2025, when W.P.(C)No.46770 of 2025 came up for admission, as 'today motion' the learned Single Judge passed the impugned interim order, which reads thus;

'Adv. C. Ajithkumar takes notice for respondents 1 and 2. Learned Deputy Solicitor General of India takes notice for respondents 3, 4 and 16. Learned Government Pleader takes notice for respondents 5, 6 and 8. Issue notice by speed post to respondents 6, 7, 9 and 10 to 13. Notice to respondents 14, 15 and 17 are dispensed with for the time being.

2. Espousing urgency with respect to the interim relief, this case is moved as 'Today'. Under challenge in this writ petition is the recovery proceedings initiated by respondents 1 to 9, which, according to the petitioner, are illegal for being in gross violation of Exts.P2 and P3 statutory notifications/ circulars issued by the Central Government and the Reserve Bank of India. The following are the interim reliefs sought for:

"a. Grant an ad interim injunction restraining and prohibiting Banks and financial institutions from taking recourse to recovery of the amounts due from the Petitioners/MSMEs under the SARFAESI Act, RDB Act, NI Act, IBC, etc. except in the manner contemplated under Paragraph 5(4)(iii) of the notification;

b. To direct the Respondent Banks to constitute committees for resolution of stress in terms of the notification dated 29.5.2015, as also to the RBI to monitor the implementation of the same;

c. To restrain and prohibit the Respondent Bank from confirming the auction and handing over the possession of the secured asset as also to restrain the auction purchaser from alienating the same or creating third party rights or in any manner dealing the same in the case that the auction has already been confirmed.”

3. Learned counsel for respondents 1 and 2 (Bank) would submit that the property has already been sold in auction and sale certificate has been issued, after receipt of the sale price.

4. Learned counsel for the petitioner would submit that all further proceedings pursuant to the sale certificate, including delivery of the property, has to be stayed.

5. Having perused the grounds urged in this writ petition, this Court is not inclined to grant the above relief, as sought for by the petitioner. In the circumstances, there will be an interim order to the effect that the proceedings pursuant to the issuance of the sale certificate in favour of the auction purchaser will be subject to the result of this writ petition.’

8. Challenging the interim order dated 12.12.2025 of the learned Single Judge in W.P.(C)No.46770 of 2025, the appellant-petitioner is before this Court in this writ appeal, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958.

9. On 15.12.2025, when this writ appeal came up for admission as 'today motion', we heard arguments of the learned counsel for the appellant-petitioner, the learned counsel for South Indian Bank Ltd. for respondents 1 and 2 and also the learned Senior Government Pleader for respondents 5 and 8. The writ appeal was ordered to be listed on 16.12.2025, for arguments in reply by the learned counsel for the appellant. On 16.12.2025, we heard arguments in reply by the learned counsel for the appellant and further arguments by the learned counsel for South Indian Bank Ltd. and also the learned Senior Government Pleader.

10. The learned counsel for the appellant-petitioner contended that the learned Single Judge did not afford a meaningful hearing to the petitioner while passing the impugned interim order dated 12.12.2025. Therefore, the said order is a nullity. The order dated 12.12.2025 was neither dictated nor pronounced in open court; instead, it was passed by the learned Single Judge in the Chambers. Therefore, the said order is a nullity. In support of the said contention, the learned counsel for the appellant placed reliance on the decision of a Three-Judge Bench of the Apex Court in *Surendra Singh v. State of Uttar Pradesh* [(1953) 2 SCC 468] and the decision of a Two-Judge Bench in *Institute of Chartered Accountants of India v. L.K. Ratna* [(1986) 4 SCC 537]. The learned counsel contended that the recovery action under the SARFAESI Act is wholly unmaintainable, violating the Micro, Small and Medium Enterprises Act, 2006, and also Section 26D of the SARFAESI Act. The learned counsel submitted that he is not addressing arguments on the merits of the contentions raised in W.P.

(C)No.46770 of 2025, since the challenge made in this writ appeal is only against the interim order dated 12.12.2025 of the learned Single Judge, declining the interim reliefs sought for in the writ petition, by limiting the same to the effect that the proceedings pursuant to the issuance of sale certificate in favour of the auction purchaser will be subject to the result of the writ petition.

11. The learned counsel for South Indian Bank, for respondents 1 and 2, contended that the present writ appeal is not maintainable in law, in view of the law laid down by a Larger Bench of this Court in K.S. Das v. State of Kerala [1992 (2) KLT 358] and the judgment of a Division Bench in Thomas P.T. and another v. Bijo Thomas and others [2021 (6) KLT 196]. The writ petition was moved as a 'today motion' on 12.12.2025. When the matter was heard in open Court, and the learned Single Judge was about to dictate the interim order, it was virtually obstructed by Adv. Mathew J. Nedumpara, the learned counsel who appeared for the petitioner. Therefore, the learned Single Judge observed that orders on the interim reliefs sought for in W.P.(C)No.46770 of 2025 shall be passed on that day itself. Thereafter, the learned Single Judge dictated the interim order in Chambers, and the order was uploaded immediately thereafter, on 12.12.2025 itself. The learned counsel submitted that the appellant-petitioner had earlier approached this Court in W.P.(C)No.41807 of 2025, challenging the very same proceedings initiated by South Indian Bank Ltd., under the provisions of the SARFAESI Act. On 08.12.2025, after hearing both sides, when the judgment was being dictated in open court, the learned counsel for the petitioner submitted that the petitioner is willing to pay to the Bank, on 08.12.2025 itself, the bid amount in the auction conducted, as the full and final settlement. Based on that undertaking, the learned Single Judge passed an order dated 08.12.2025, granting time to the petitioner till 10.12.2025, 5 p.m., to pay the entire amount due to the Bank. On 11.12.2025, Adv. Mathew J. Nedumpara entered appearance for the petitioner in W.P.(C)No.41807 of 2025, since the earlier counsel Adv. Ranjish S. Menon relinquished vakalath. The petitioner filed I.A.No.2 of 2025 seeking an order to recall/modify the order dated 08.12.2025 in W.P.(C)No.41807 of 2025. The learned Single Judge dismissed W.P.(C)No.41807 of 2025, on 11.12.2025, by a separate judgment.

12. It is averred in paragraph 3 of the affidavit dated 11.12.2025 filed in support of W.P.(C)No.46770 of 2025 that the petitioner has not filed any cases, except W.P.(C)No.27271 of 2025 and W.P.(C)No.41807 of 2025, before this Court or any other Court seeking similar and identical reliefs.

13. W.P.(C)No.27271 of 2025, referred to in the affidavit filed in support of W.P.(C)No.46770 of 2025, is one filed before this Court on 13.07.2025, by the appellant and its partners, seeking the following reliefs against the SARFAESI proceedings initiated by South Indian Bank Ltd., in respect of the very same financial assistance/facilities;

“(i) To issue a writ of mandamus directing the respondents No.1 to 3 to provide 15 monthly instalments to pay the outstanding loan liability of

Rs.18,17,65,411.73, as on 29.06.2025 to the petitioners and thus settle the entire financial liability burdened on them.

(ii) To issue any other writ or direction appropriate in the circumstances of this case.”

14. The interim relief sought for in W.P.(C)No.27271 of 2025 reads thus;

“It is humbly prayed that this Hon’ble Court may be pleased to stay all further proceedings pursuant to Exhibit P8 e-auction sale notice issued by the respondents, pending disposal of the Writ Petition.”

15. On 29.07.2025, when W.P.(C)No.27271 of 2025 came up for admission, the learned Single Judge issued notice before admission. The learned counsel for South Indian Bank Ltd. took notice for the respondents. The interim order dated 29.07.2025 in W.P.(C)No.27271 of 2025 reads thus;

“For deciding the maintainability of the writ petition and to consider the prayers seeking instalment facility and to defer further coercive steps against the petitioners, as an interim measure, there will be a direction to the petitioners to remit an amount of Rs.2.5 crores on or before 13.08.2025 and the balance 2.5 crores on or before 31.08.2025. It is made clear that if the above payment is not made, the respondents will be at liberty to proceed further, in accordance with law. Post on 16.09.2025.” (underline supplied)

16. The petitioners in W.P.(C)No.27271 of 2025 failed to remit an amount of Rs.2.5 crores on or before 13.08.2025 and the balance 2.5 crores on or before 31.08.2025, in terms of the directions contained in the interim order dated 29.07.2025. By the judgment dated 16.09.2025, the learned Single Judge dismissed W.P.(C)No.27271 of 2025, after taking note of the law laid down by the Apex Court in South Indian Bank Ltd. v. Naveen Mathew Philip [(2023) 17 SCC 311], without prejudice to the right of the petitioners to challenge the measures taken by the secured creditor as provided under the SARFAESI Act, if so advised. Paragraphs 2 to 5 and also the last paragraph of that judgment read thus;

“2. An interim order was passed by this court on 29.07.2025 as follows;

Notice before admission. The learned Standing Counsel takes notice for the respondents. For deciding the maintainability of the writ petition and to consider the prayers seeking instalment facility and to defer further coercive steps against the petitioners, as an interim measure, there will be a direction to the petitioners to remit an amount of Rs.2.5 crores on or before 13.08.2025 and the balance 2.5 crores on or before 31.08.2025. It is made clear that if the above payment is not made, the respondents will be at liberty to proceed further, in accordance with law. Post on 16.09.2025.

3. It is not disputed before me that the above order has not been complied with by the petitioners.

4. This Court exercises very limited jurisdiction in matters arising under the

SARFAESI Act, as repeatedly held by the Honourable Supreme Court in several judgments, including in *South Indian Bank Ltd. v. Naveen Mathew Philip* [(2023) 17 SCC 311] 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. When this Court is approached with a prayer to permit the borrowers to clear the liability in instalments, the borrowers must prove bona fides. The non-compliance of the interim order indicates that the petitioners in this case have not shown any bona fides to enable this Court to permit them to clear the liability in instalments.

5. Therefore, I find no reason to grant the reliefs sought for in this writ petition, and the same will stand dismissed without prejudice to the right of the petitioners to challenge the measures taken by the secured creditor as provided under the SARFAESI Act, if so advised.

The writ petition is dismissed as above.” (underline supplied)

17. W.P.(C)No.41807 of 2025, referred to in the affidavit filed in support of W.P. (C)No.46770 of 2025, is another writ petition filed by the appellant herein before this Court on 06.11.2025, seeking the following reliefs against the SARFAESI proceedings initiated by South Indian Bank Ltd., in respect of the very same financial assistance/facilities;

“(a) issue a writ of mandamus or any other appropriate Writ, order or direction, thereby directing the respondent Bank to recall the classification of petitioner MSME account as NPA and forward the accounts to the Stress Committee for deciding a Corrective Action Plan in accordance with the regulations in the prescribed Framework; and

(b) issue a writ of certiorari or any other appropriate Writ, order or direction, thereby quashing (i) the notice vide which the accounts of the petitioner MSME were classified as NPA as on 26.06.2024 and (ii) all proceedings emanating from and initiated in pursuance of the classification of the petitioner’s credit facility account as NPA; and

(c) Pass such other order(s) and/or direction(s) as this Hon’ble Court, in light of the facts and circumstances of the present case, deem appropriate and necessary, in the interest of justice.”

18. The interim reliefs sought for in W.P.(C)No.41807 of 2025 read thus;

“(a) direct the Respondents to maintain status quo with respect to the assets of the petitioner MSME secured with the respondent Bank; and

(b) pass such other order(s) or direction(s) that this Hon'ble Court deems fit in the facts and circumstances of the case, in the interest of justice and equity.”

19. On 05.12.2025, when W.P.(C)No.41807 of 2025 came up for admission, the learned Single Judge passed the following order;

"The counsel for the respondent will specifically get instructions as to what is the amount in arrears in the petitioner's loan account. It is clarified that the data to be furnished before this Court is with respect to the arrears only; and not with respect to the entire outstanding amount. Let the data be made available by 08.12.2025."

20. On 08.12.2025, when W.P.(C)No.41807 of 2025 came up for consideration before another learned Single Judge, the following order was passed;

"After hearing both parties, when the judgment was being dictated, the learned counsel for the petitioner made a submission, upon receiving instructions from the client, that the party is willing to pay the bid amount in the auction conducted, today itself, as full and final settlement, due to the Bank.

2. The learned counsel for the Bank was directed to get instructions whether they are amenable to accept the bid amount as one time settlement. The learned counsel submits that the Bank is ready and willing to accept the amount, provided the amount is deposited by 5 pm on today itself.

3. The learned counsel for the petitioner submits that since it is difficult for him to raise such a huge amount before 5 p.m. today, he seeks a breathing time to pay the same. Since tomorrow (09.12.2025) is a non-working day for the Bank due to the Kerala Local Body Election, the petitioner is unable to arrange the fund and remit it tomorrow. Hence, he seeks time till 5 p.m on 10.12.2025.

4. Taking note of the fact that the property is having an extent of 59.42 Ares sold today in the e-auction, and the petitioner has come forward to pay the entire amount on or before 5 p.m on 10.12.2025, I am inclined to grant time to the petitioner till 5 p.m on 10.12.2025.

The amount deposited amounting to 25% by the auction purchaser shall be kept in a separate account and the balance 75% need not be accepted for the time being. If the petitioner does not remit the amount of Rs.19,82,32,000/-(Rupees Nineteen crore eighty two lakhs thirty two thousand only), the Bank is free to accept the balance 75% from the auction purchaser and proceed in accordance with law. Till the next date of posting, the sale certificate shall not be issued."

21. On 11.12.2025, when W.P.(C)No.41807 of 2025 came up for further consideration, Adv. Mathew J. Nedumpara entered appearance for the petitioner, since the earlier counsel Adv. Ranjish S. Menon relinquished vakalath. The petitioner filed I.A.No.2 of 2025 seeking an order to recall/modify the order dated 08.12.2025 to the extent which it permits the confirmation of the auction in the event of the petitioner failing to pay the bid amount of Rs.19,82,32,000/- on or before 5 p.m. on 11.12.2025 and further to stay the entire proceedings under Sections 13(2), 13(4) and 14 of the SARFAESI Act and the rules thereunder. By the order dated 11.12.2025, the learned Single Judge dismissed

I.A.No.2 of 2025 in W.P.(C)No.41807 of 2025. The said order reads thus;

'Today, Sri. Adv. Mathew J. Nedumpara appears and has filed vakalath after relinquishing the vakalath held by Sri. Ranjish S. Menon.

2. In the order dated 08.12.2025, it is specifically stated that both the parties were heard fully and when the judgment was dictated in full and the Writ Petition was about to be dismissed, the counsel for the petitioner has made a submission, on instructions from the petitioner that he is willing to pay the bid amount in the auction conducted provided, the bank accepts the same as full and final settlement towards the loan. The bank, on instructions, submitted that they are ready to accept the bid amount as full and final settlement, provided the amount is deposited by 5 pm today (08.12.2025) itself.

3. In such circumstances only, though the judgment was dictated fully, as an indulgence, the petitioner was granted a time till 5.00 p.m. on 10.12.2025, taking note of the fact that 09.12.2025 was a non working day for the bank due to the Kerala local body elections. The present petition is filed for modification of the order dated 08.12.2025 with the present prayer as follows:-

"To recall/modify the order dated 08.12.2025 to the extent which it permits the confirmation of the auction in the event of the Petitioner failing to pay the bid amount of Rs. 19,82,32,000/- on or before 5p.m on 11.12.2025 and further to stay the entire proceedings under Section 13(2), 13(4) and 14 the SARFAESI Act and the rules thereunder;"

4. In paragraph No.9 of the affidavit, the counsel for the petitioner has averred that this court was not inclined to allow the W.P. and when it was almost dismissed, the counsel, in his anxiety, to protect the interest of his client from inequality and injustice, after consulting with the petitioner, made the submission that he is willing to pay the bid amount on 8.12.2025. Since the petitioner has not complied with the undertaking that he will remit the bid amount for which time was given till 5 pm on 10.12.2025, I am not inclined to grant the prayer sought for in this I.A. Accordingly, this I.A. stands dismissed.'

22. It is submitted at the Bar, by the learned counsel for the appellant and the learned counsel for South Indian Bank Ltd., for respondents 1 and 2, that the learned Single Judge dismissed W.P.(C)No.41807 of 2025 on 11.12.2025, by a separate judgment dictated in open court.

23. On 12.12.2025, the appellant-petitioner moved W.P.(C)No.46770 of 2025 before the learned Single Judge, as 'today motion', seeking the reliefs extracted hereinbefore in the 1st paragraph against the SARFAESI proceedings initiated by South Indian Bank Ltd., in respect of the very same financial assistance/facilities. Relief (b) sought for in W.P.(C)No.46770 of 2025, in furtherance of relief (a), is a declaration that the judgments of the Supreme Court in Pro Knits v. Canara Bank [(2024) 10 SCC 292] and Shree Shree Swami Samarth Construction v. The Board of Directors of NKGSB Co-op Bank [2025 SCC OnLine SC 1566] were rendered

per incuriam and sub silentio and will not bind the courts and tribunals in this country under Article 141 of the Constitution, inasmuch as- (i) in *Pro Knits*, the Court had, contrary to the letter and spirit of the notification, observed that if the MSME had allowed its account to be classified as NPA and for recovery action to be initiated, having failed to bring to the notice of the bank that it is an MSME supported by identifiable and verifiable documents, it cannot be allowed to “thwart” the SARFAESI action at a later stage; and (ii) in *Shree Shree Swami Samarth*, the Court observed that if the MSME had not even replied to the notice under Section 13(2) and claimed protection as an MSME supported by an affidavit, the recovery action cannot thereafter be challenged – which are contrary to the very letter as well as the spirit of the notification and have created a scenario where the said judgments have been instrumental in denying the benefit of the notification to MSMEs across the country.

24. The appellant and its partners had earlier approached this Court in W.P. (C)No.27271 of 2025 seeking reliefs against the SARFAESI proceedings initiated by South Indian Bank Ltd., in respect of the very same financial assistance/facilities. The said writ petition was dismissed by the judgment dated 16.09.2025, after taking note of the law laid down by the Apex Court in *South Indian Bank Ltd. v. Naveen Mathew Philip* [(2023) 17 SCC 311], without prejudice to the right of the petitioners to challenge the measures taken by the secured creditor as provided under the SARFAESI Act, if so advised.

25. In *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.

26. 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.

27. In W.P.(C)No.46770 of 2025, at paragraph 6 of the statement of facts, the appellant-petitioner has stated that in W.P.(C)No.27271 of 2025 filed by the petitioner seeking 15 monthly installments to discharge its liability, this Court directed payment of Rs.2.5 crores each by 13.08.2025 and 31.08.2025, and the case was dismissed by the judgment dated 16.09.2025 due to non-compliance with the interim order by the petitioner. A copy of the judgment dated 16.09.2025 in W.P.(C)No.27271 of 2025 is not marked as an exhibit in W.P.(C)No.46770 of 2025, though in both the writ petitions, reliefs are sought against the SARFAESI proceedings initiated by South Indian Bank Ltd., in respect of the very same financial assistance/facilities. As already noticed hereinbefore, by the judgment dated 16.09.2025, the learned Single Judge dismissed W.P.(C)No.27271 of 2025, after taking note of the law laid down by the Apex Court in *South Indian Bank Ltd. v. Naveen Mathew Philip* [(2023) 17 SCC 311], without prejudice to the right of the petitioners to challenge the measures taken by the secured creditor as provided under the SARFAESI Act, if so advised. Therefore, a

factually incorrect statement has been made by the appellant-petitioner in W.P.(C)No.46770 of 2025, at paragraph 6 of the statement of facts, that the dismissal of W.P.(C)No.27271 of 2025, by the judgment dated 16.09.2025, was due to non-compliance with the interim order by the petitioner.

28. As stated by Scrutton, L.J, in R. v. Kensington Income Tax Commissioners [(1917) 1 K.B. 486], an applicant who does not come with candid facts and 'clean breast' cannot hold a writ of the court with 'soiled hands'. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction.

29. In Prestige Lights Limited v. State Bank of India [(2007) 8 SCC 449], the Apex Court reiterated that a prerogative remedy is not a matter of course. Therefore, in exercising extraordinary power, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppress relevant materials or is otherwise guilty of misleading the court, the Court may dismiss the action without adjudicating the matter. This rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of the court by deceiving it. The very basis of the writ jurisdiction rests on the disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

30. In Prestige Lights Limited [(2007) 8 SCC 449], the Apex Court held further that, under Article 226 of the Constitution of India, the High Court is exercising discretionary and extraordinary jurisdiction. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the court, the writ court may refuse to entertain the petition and dismiss it without entering into the merits of the matter.

31. In W.P.(C)No.46770 of 2025, at paragraph 6 of the statement of facts, the appellant-petitioner has placed reliance on Ext.P18 judgment dated 06.08.2025 of a learned Single Judge in W.P.(C)No.5466 of 2025 - M/s.PDMC Industries v. Ministry of Micro, Small and Medium Enterprises. The said judgment was set aside by the Division Bench, by the judgment dated 12.12.2025 in W.A.No.2281 of 2025 - South Indian Bank v. M/s. PDMC Industries - [2025 KHC OnLine 1307], holding that the 'Henderson Principle' operates on the broader contours of judicial propriety and fairness, ensuring that the judicial system remains an instrument of justice rather than a platform for procedural manipulation. Judicial propriety demands that courts maintain the finality and integrity of their decisions, preventing repeated challenges to settled matters. Once a matter has been adjudicated, it should not be revisited unless exceptional circumstances warrant such reconsideration. Repeated litigation of the same issue not only

wastes judicial resources but also subjects the opposing party to unnecessary expense and harassment. judicial processes are not merely technical mechanisms but are rooted in principles of equity and justice.

32. On the question of maintainability of a writ appeal under Section 5(i) of the Kerala High Court Act, 1958, against an interim order passed by the learned Single Judge, during the pendency of the writ petition, the Larger Bench of this Court in *K. S. Das v. State of Kerala* [1992 (2) KLT 358] held that the word 'order' in Section 5(i) of the Kerala High Court Act includes, apart from other orders, orders passed by the High Court in miscellaneous petitions filed in the writ petitions provided the orders are to be in force pending the writ petition. An appeal would lie against such orders only if the orders substantially affect or touch upon the substantial rights or liabilities of the parties or are matters of moment and cause substantial prejudice to the parties. The nature of the 'order' appealable belongs to the category of 'intermediate orders' referred to by the Apex Court in *Madhu Limaye v. State of Maharashtra* [(1977) 4 SCC 551]. The word 'order' is not confined to 'final order' which disposes of the writ petition. The 'orders' should not, however, be ad-interim orders in force pending the miscellaneous petition or orders merely of a procedural nature.

33. In *Thomas P. T. and another v. Bijo Thomas and others* [2021 (6) KLT 196], a Division Bench of this Court noticed that the view that was upheld by the Larger Bench in *K.S. Das* [1992 (2) KLT 358] was that even though an appeal could be filed against an interlocutory order passed in a writ petition, in order to be qualified for challenge in an appeal, the order shall be either substantially affecting or touching upon the substantial rights or liabilities of the parties or which are matters of moment and cause substantial prejudice to the parties. According to the Larger Bench, the nature of the order appealable belongs to the category of intermediate orders referred to by the Apex Court in *Madhu Limaye* [(1977) 4 SCC 551]. It was, however, clarified by the Larger Bench that such orders should not, however, be ad interim orders or orders merely of a procedural nature.

34. In the instant case, as already noticed hereinbefore, W.P.(C)No.27271 of 2025 filed by appellant-petitioner in which reliefs were sought against the SARFAESI proceedings initiated by South Indian Bank Ltd., in respect of the very same financial assistance/facilities, ended in dismissal by the judgment dated 16.09.2025, after taking note of the law laid down by the Apex Court in *South Indian Bank Ltd. v. Naveen Mathew Philip* [(2023) 17 SCC 311], without prejudice to the right of the petitioners to challenge the measures taken by the secured creditor as provided under the SARFAESI Act, if so advised. Instead of invoking the statutory remedy provided under the SARFAESI Act, the appellant has chosen to file writ petitions before this Court, raising repeated challenges against the SARFAESI proceedings initiated by South Indian Bank Ltd., in respect of the very same financial assistance/facilities. In the impugned interim order dated 12.12.2025, the learned Single Judge, after quoting the interim reliefs

sought for in W.P.(C)No.46770 of 2025, granted an interim order to the effect that the proceedings pursuant to the issuance of the sale certificate in favour of the auction purchaser will be subject to the result of this writ petition. In the said order, the learned Single Judge has also noticed the submission made by the learned counsel for South Indian Bank Ltd., for respondents 1 and 2, that the property has already been sold in auction and a sale certificate has been issued after receipt of the sale price. In the above circumstances, no interference is warranted on the interim order dated 12.12.2025 of the learned Single Judge in W.P.(C)No.46770 of 2025, to the extent of declining the interim reliefs sought for in that writ petition, by limiting the same to the effect that the proceedings pursuant to the issuance of sale certificate in favour of the auction purchaser will be subject to the result of W.P.(C)No.46770 of 2025, in this intra-court appeal filed under Section 5(i) of the Kerala High Court Act, 1958.

35. Relying on the decision of a Three-Judge Bench of the Apex Court in *Surendra Singh v. State of Uttar Pradesh* [(1953) 2 SCC 468] and also the decision of a Two-Judge Bench in *Institute of Chartered Accountants of India v. L.K. Ratna* [(1986) 4 SCC 537], the learned counsel for the appellant-petitioner would contend that the impugned interim order dated 12.12.2025 of the learned Single Judge is a nullity, since it was neither dictated nor pronounced in open Court, and the said order is passed without affording a meaningful hearing to the petitioner.

36. In *Surendra Singh* [(1953) 2 SCC 468] in the context of Section 369 of the Code of Criminal Procedure 1898, the Apex Court held that a judgment is the final decision of the Court intimated to the parties and to the world at large by formal 'pronouncement' or 'delivery' in open court. After the judgment has been delivered provision is made for review. In *L.K. Ratna* [(1986) 4 SCC 537], in the context of disciplinary proceedings under Section 21 of the Chartered Accountants Act, 1949, the Apex Court noticed the legal principle that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body.

37. In the case at hand, during the course of arguments, the specific submission made by the learned counsel for South Indian Bank Ltd., for respondents 1 and 2, is that when W.P.(C)No.46770 of 2025, which was moved as a 'Today motion' came up for consideration on 12.12.2025 (Friday), the learned Single Judge heard the matter in open Court, and when the learned Single Judge was about to dictate the interim order, it was virtually obstructed by Adv. Mathew J. Nedumpara, the learned counsel who appeared for the petitioner. Therefore, the learned Single Judge observed that orders on the interim reliefs sought for in W.P. (C)No.46770 of 2025 shall be passed on that day itself. Thereafter, the learned Single Judge dictated the interim order in Chambers, and the order was uploaded immediately thereafter, on 12.12.2025 itself.

38. As already noticed hereinbefore, one of the reliefs sought for in W.P. (C)No.46770 of 2025 is a declaration that the judgments of the Supreme Court

in *Pro Knits v. Canara Bank* [(2024) 10 SCC 292] and *Shree Shree Swami Samarth Construction v. The Board of Directors of NKGSB Co-op Bank* [2025 SCC OnLine SC 1566] were rendered per incuriam and sub silentio and will not bind the courts and tribunals in this country under Article 141 of the Constitution. If as a matter of fact, what transpired in the court on 12.12.2025 is as submitted by the learned counsel for the South Indian Bank Ltd., for respondents 1 and 2, the learned Single Judge cannot be found fault with in adopting the procedure stated hereinbefore, in order to uphold the dignity and decorum of the court. In such circumstances, the contention of the learned counsel for the appellant-petitioner that the impugned order dated 12.12.2025 of the learned Single Judge in W.P.(C)No.46770 of 2025 is a nullity and that it is one passed without affording a meaningful hearing to the petitioner can only be repelled as untenable and we do so.

39. In the above circumstances, we find no reason to interfere with the interim order dated 12.12.2025 of the learned Single Judge in W.P.(C)No.46770 of 2025.

This writ appeal fails and the same is accordingly dismissed.