
(2025) 12 KL CK 1902
In the High Court Of Kerala
Case No : Writ Appeal No.2281 Of 2025

South Indian Bank

APPELLANT

Vs

M/s PDMC Industries

RESPONDENT

Date of Decision : 12-12-2025

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19, 21, 32, 226
Code of Civil Procedure, 1908 — Section 11, Order 47 Rule 1
Securitization and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 — Section 13(2), 13(3A), 13(4), 14, 17, 17(1), 18
Kerala High Court Act, 1958 — Section 5(i)

Citation : (2025) 12 KL CK 1902

Hon'ble Judges : Anil K. Narendran, J;P.M. Manoj, J

Bench : Division Bench

Advocate : Mohan Jacob George, P.V. Parvathy, Reena Thomas, Nigi George,
Ananthu V.Lal, Sherin Varghese, Brahma R.K, Nisha George, T.C. Krishna, George
Poonthottam

Final Decision : Allowed

Judgement

Anil K. Narendran, J

1. The 2nd respondent in W.P.(C)No.5466 of 2025 has filed this writ appeal, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958, challenging the judgment dated 06.08.2025 of the learned Single Judge in that writ petition, which was one filed by respondents herein-petitioners, invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking the following reliefs;

"i) Issue a writ of certiorari calling for the records leading to Exts.P8, P8(a) and P8 (b) whereby the loan facility was recalled;

ii) Issue a writ declaring further that the classification of the loan accounts of the petitioners as NPA by resorting to circuitous methods contrary to the provisions of law is bad in law;

iii) Issue a writ declaring that the petitioner is entitled to the benefits as per Exts.P3 and P4 and the denial otherwise is violative of the fundamental rights of the petitioners;

iv) Issue a writ of certiorari calling for the records leading to Exts.P23 and P25 orders as well as P24 and P26 notices and all further actions taken thereunder and to quash the same;

v) Issue a writ declaring that the action taken to take possession of the property given as security towards KCC loan is a device resorted to defeat the MSME benefits, which the petitioner is entitled and the action is nothing but a fraud on power."

2. The interim relief sought for in W.P.(C)No.5466 of 2025 reads thus;

"For the reasons stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to stay all action initiated and taken which resulted in the issuance of Exts.P23 and P25 orders, and further actions pursuant thereto, including Exts.P24 and P26 notices, pending disposal of the writ petition, in the interest of justice."

3. Going by the averments in the writ petition, the 1st petitioner M/s.PDMC Industries is a partnership firm engaged in metal crushing and M-sand production, having Udyam registration for Micro, Small and Medium Enterprise (MSME), on 27.11.2020, as per Ext.P1 Udyam registration certificate dated 17.08.2024, issued by the 1st respondent Ministry of Micro, Small and Medium Enterprises, Government of India. The 2nd petitioner M/s.PDMC Co-Rubber is a proprietary concern engaged in the business of rubber processing, having Udyam registration for MSME, on 27.11.2020, as per Ext.P2 Udyam registration certificate dated 17.08.2024. The 3rd petitioner is the Managing Partner of M/s.PDMC Industries and the proprietor of M/s.PDMC Co-Rubber. The details of the financial assistance/facilities availed by the 1st petitioner and the 2nd petitioner from the 2nd respondent South Indian Bank are stated in sub-paragraphs (A) and (B) of paragraph 2 of the statement of facts of W.P.(C)No.5466 of 2025. The details of the Kisan Credit Card overdraft facility availed by the 3rd petitioner and his brother Cyriac Mathew are stated sub-paragraph (C) of paragraph 2 of the statement of facts of the said writ petition. Along with the writ petition, the petitioners have placed on record Exts.P1 to P28(a) documents. The document marked as Ext.P3 is a copy of the notification dated 29.05.2015 issued by the 1st respondent Ministry, namely, the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises; Ext.P4 is a copy of Reserve Bank of India [Lending to Micro, Small and Medium Enterprises (MSME) Sector] Directions, 2016; Ext.P8 is a copy of loan recall notice dated 19.04.2023 issued by the 2nd respondent Bank to petitioners 1 and 2 and also to Cyriac Mathew, after the issuance of Ext.P7 notice dated 12.04.2023, classifying the loan account of the 1st petitioner as Non-Performing Asset (NPA), with effect from 29.03.2023; Ext.P8(a) is a copy of loan recall notice dated 02.05.2023 in respect of the loan

availed by the 2nd petitioner; Ext.P8(b) is a copy of loan recall notice dated 02.05.2023 in respect of the loan availed by the 3rd petitioner and his brother Cyriac Mathew; Ext.P23 is a copy of order dated 25.11.2024 of the Chief Judicial Magistrate Court in in M.C.No.816 of 2024 in a petition filed by the 2nd respondent Bank, against the 1st petitioner, the 3rd petitioner, his wife Sunitha Sebastain and his brother Cyriac Mathew, invoking the provisions under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (SARFAESI Act), seeking the assistance of the court to take possession of the secured asset; Ext.P24 is a copy of the notice dated 16.12.2024 issued by the Advocate Commissioner appointed by Ext.P23 order; Ext.P25 is a copy of order dated 27.11.2024 of the Chief Judicial Magistrate Court in in M.C.No.830 of 2024 in a petition filed by the 2nd respondent Bank, against the 3rd petitioner, his wife Sunitha Sebastain and his brothers Cyriac Mathew and Sebastain Mathew, invoking the provisions under Section 14 of SARFAESI Act, seeking the assistance of the court to take possession of the secured asset; Ext.P26 is a copy of the notice dated 21.12.2024 issued by the Advocate Commissioner appointed by Ext.P25 order.

4. In W.P.(C)No.5466 of 2025, the 2nd respondent South Indian Bank filed a counter affidavit dated 24.03.2025, opposing the reliefs sought for, producing therewith Exts.R2(a) to R2(j) documents. Along with I.A.No.1 of 2025 in W.P.(C)No.5466 of 2025, the petitioners produced Ext.P29 e-auction sale notice dated 24.03.2025 issued by the Authorised Officer of the 2nd respondent Bank. The petitioners filed a reply affidavit dated 07.04.2025 to the counter affidavit filed by the 2nd respondent Bank, producing therewith Exts.P30 to P31(f) documents. Along with I.A.No.3 of 2025, the petitioners produced Exts.P32 to P34 documents. Along with I.A.No.6 of 2025, the petitioners produced Exts.P35 and P36 documents. Along with I.A.No.7 of 2025, the petitioners produced Ext.P37 document.

5. The learned Single Judge, by the impugned judgment dated 06.08.2025, partly allowed W.P.(C)No.5466 of 2025. The learned Single Judge found that a combined reading of the judgments in *Pro Knits v. Canara Bank* [(2024) 10 SCC 292] and *Shri Shri Swami Samarth Construction and Finance Solution v. NKGSB Coop. Bank Ltd.* [2025 SCC OnLine SC 1566] makes it clear that Banks are mandatorily required to identify incipient stress and classify MSME accounts under the Special Mention Account (SMA) categories before declaring them as NPAs, provided the MSME furnishes authenticated and verifiable documents establishing its status under the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act). While *Pro Knits* [(2024) 10 SCC 292] held that this obligation arises only upon production of such material before NPA classification, *Shri Shri Swami Samarth Construction and Finance Solution* [2025 SCC OnLine SC 1566] clarified that even if the Bank has no prior knowledge, once the borrower, in its reply to the Section 13(2) notice, asserts that it is an MSME and claims the benefit of the framework citing reasons supported by an affidavit, the Bank is mandatorily bound to look into such claim and keep

SARFAESI proceedings in abeyance. Both cases caution that MSMEs cannot raise their status belatedly, after SARFAESI actions have concluded or failed in litigation. On the facts of the case at hand, the learned Single Judge found that both the 1st and 2nd petitioners claimed the benefit of Exts.P3 and P4 notifications through communication dated 20.03.2023 and 29.03.2023, well before their accounts were classified as NPAs on 29.03.2023 and 06.04.2023, respectively. Therefore, the Bank was bound to comply with the relevant notifications applicable to the MSME enterprises. In the absence of any material, compliance with the mandatory structure and procedure under Clause 3 of the MSME Framework in Ext.P3 notification remains unsubstantiated. A perusal of Exts.R2(i) and R2(j) minutes of the Committee confirms that the Committee comprised only internal Bank officials, such as the DGM, Chief Manager, Assistant General Manager, Manager, and Assistant Manager, with no indication of any external or Government representation. Thus, it is clear that there has been no consideration by a Committee as envisaged under Clause 3 of the MSME Framework in Ext.P3 notification, which is mandatory. Accordingly, it follows that the Bank has not complied with the specific conditions in Exts.P3 and P4 Notifications, in particular Clause 1, Clause 3, Clause 5 of Ext.P3 and Clause 2.1, Clause 4.8 of Ext.P4, before classifying the accounts of the 1st and 2nd petitioners as NPAs, thus breaching the principles laid down by the Apex Court in the judgments referred above. The Bank did not specifically respond to this assertion of non-communication, but merely stated in paragraph 8 of the counter that the 1st petitioner is "well aware" of the Committee's rejection, a vague claim unsupported by any material showing actual communication of Exts.R2(h) and R2(i). Non-communication of the alleged consideration also violates the intent of the notification.

6. In paragraphs 29 to 31 of the impugned judgment dated 06.08.2025, the learned Single Judge dealt with the objection raised by the 2nd respondent Bank on the maintainability of W.P.(C)No.5466 of 2025. Paragraphs 29 to 31 of the impugned judgment read thus;

"29. As regards the maintainability of the instant writ petition, it is to be noted that the classification of an account as NPA is a distinct and preliminary act having serious civil consequences, more so when it is in breach of the judgments referred to earlier, besides the notifications concerned. As such, the classification of the accounts of the first and the second petitioners is clearly illegal and liable to be declared so. The grievance of a borrower regarding asset classification and consequential invocation of the SARFAESI Act by issuing notice under Section 13(2) of the SARFAESI Act cannot be redressed under Section 17 of the SARFAESI Act, in the absence of invocation of Section 13(4) of the SARFAESI Act, and judicial review under Article 226 is the only remedy.

30. The remedy under Section 17 is only against the invocation of Section 13(4) of the SARFAESI Act, after a legal and valid classification of the accounts as NPA. In the present case, although proceedings under Section 13(4) have since been

initiated, the foundational challenge is not to the recovery steps themselves but to the very legality of the NPA classification on the ground that the mandatory procedure prescribed under Exts.P3 and P4 was not followed. This renders the classification as NPA illegal, given the position of law reinforced by the decisions in *Pro Knits v. Canara Bank* [(2024) 10 SCC 292] and *Shri Shri Swami Samarth Construction and Finance Solution v. NKGSB Coop. Bank Ltd.* [2025 SCC OnLine SC 1566], that the RBI Framework is binding and must be complied with before NPA classification in MSME accounts. Since the petitioners' grievance arises at the threshold stage of wrongful classification itself, and it cannot be redressed under Section 17 of the SARFAESI Act, the writ petition is therefore maintainable under Article 226 of the Constitution.

31. The objection raised by the respondent Bank that the writ petition is barred by *res judicata* due to the filing of the earlier writ petitions, W.P.(C)Nos. 29909, 32498, and 32643 of 2023, and subsequent proceedings in R.P.Nos.535 and 536 of 2024 and W.A.Nos.787, 806, and 835 of 2024, also cannot be sustained. In W.P.(C)No.44147 of 2024, the last in the series of petitions, this Court had expressly left all contentions of the petitioners open. Given the above, none of the judgments cited by the respondent apply to the facts of the case."

(underline supplied)

7. After repelling the contention raised by the 2nd respondent Bank on the maintainability of W.P.(C)No.5466 of 2025, the learned Single Judge allowed the writ petition in part, declaring that the 1st and 2nd petitioners are entitled to the benefits as per Exts.P3 and P4 notifications. The learned Single Judge quashed Ext.P9 notice dated 02.06.2023 issued by the 2nd respondent Bank, under Section 13(2) of the SARFAESI Act, in respect of the financial assistance/facilities availed by the 1st petitioner and Ext.P16 notice dated 31.07.2023 issued by the 2nd respondent Bank, under Section 13(2) of the SARFAESI Act, in respect of the financial assistance/facilities availed by the 2nd petitioner. Consequently, there is a direction to the 2nd respondent Bank to comply with Exts.P3 and P4 notifications, as far as the 1st and 2nd petitioners are concerned, and, it is ordered that, only after the said compliance and based on the decision thereon, the Bank shall decide on the classification of the accounts of the 1st and 2nd petitioners as NPA to proceed under the SARFAESI Act.

8. Challenging the judgment dated 06.08.2025 of the learned Single Judge in W.P. (C)No.5466 of 2025, the appellant-2nd respondent Bank is before this Court in this writ appeal.

9. Along with this writ appeal, the appellants have placed on record, Annexures A1 to A4 documents. Paragraphs 7 of the statement of facts of W.A.No.2281 of 2025 reads thus;

"7. In this regard, it is humbly submitted that the said writ petition, i.e., W.P. (C)No.44147 of 2024, was filed by the writ petitioner, contending that another

writ petition is pending before the Bombay High Court. The copy of the aforesaid writ petition, i.e., W.P.(C)No.44147 of 2024 dated 09.12.2024, is produced as Annexure A1. The copy of the judgment dated 18.02.2025 in W.P.(C)No.44147 of 2024 is also produced as Annexure A2. The copy of W.P.(C)No. 32643 of 2023, dated 03.10.2023, filed by the 2nd petitioner earlier before this Hon'ble Court, is produced as Annexure A3, and the counter affidavit dated 01.11.2023 filed by the Bank in the said writ petition is produced as Annexure A4. It may be noted that the contention in Annexure A1 being left open did not in any way affect the binding inter-party judgment dated 21.05.2024 in W.P.(C)Nos.32643 of 2023, 29909 of 2023 and 32498 of 2023 filed by the writ petitioners, which were dismissed by the learned Single Judge of this own court as not maintainable."

(underline supplied)

10. We heard arguments of the learned counsel for the appellant-2nd respondent Bank and also the learned Senior Counsel for the respondents-petitioners.

11. The learned counsel for the appellant Bank contended that the question of maintainability of W.P.(C)No.5466 of 2025 raised by the 2nd respondent Bank (appellant herein) placing reliance on the decisions of the Apex Court in *Federal Bank Ltd. v. Sagar Thomas* [(2003) 10 SCC 733], *ARC Pvt. Ltd. v. Viswa Bharati Vidya Mandir* [(2022) 5 SCC 345], and *Sobha S. v. Muthoot Finance Limited* [2025 (2) KHC 229], against a private company doing banking business as a Scheduled Bank, was not considered by the learned Single Judge. The 2nd respondent Bank has also raised specific contention in the counter affidavit that W.P.(C)No.5466 of 2025 is barred by the principles of *res judicata* and constructive *res judicata* as well as estoppel by judgment, in view of Ext.R2(a) to R2(f) judgments/order. The contention raised by the appellant Bank, placing reliance on the decision of the Apex Court in *Celir LLP v. Sumati Prasad Bafna* [2024 SCC OnLine 3727] and that of this Court in *Jayaprakash J. v. Union Bank of India* [2023 SCC OnLine Ker 9106 : 2023 (7) KHC 282] and *Esthappan M.D. v. Reserve Bank of India* [2025 KHC OnLine 655], were not dealt with appropriately by the learned Single Judge, on the ground that, as per Annexure A2 judgment dated 18.02.2025 in W.P.(C)No.44147 of 2024, a learned Single Judge of this Court had expressly left all the contentions of the writ petitioners open. The contention raised by the 2nd respondent Bank in the counter affidavit about the conduct of the writ petitioners (respondents herein) in suppressing material facts, i.e., facts relating to Exts.R2(a) to R2(f) judgments/order of this Court, while filing W.P.(C)No.5466 of 2025 before this Court, was not dealt with by the learned Single Judge in the impugned judgment. The learned Single Judge ought to have dismissed the W.P.(C)No.5466 of 2025 on the ground of suppression of material facts.

12. The learned counsel for the appellant Bank pointed out that W.P.(C)No.44147 of 2024 was filed by the writ petitioners, contending that writ petitions are pending before the Bombay High Court. Annexure A2 judgment dated 18.02.2025 of the learned Single Judge in W.P.(C)No.44147 of 2024, would not in

any manner affect the binding inter-parte judgment, i.e., Ext.R2(b) judgment dated 21.05.2024 in W.P.(C)Nos.32643 of 2023, 29909 of 2023 and 32498 of 2023 filed by the writ petitioners. The question of maintainability of the writ petitions, decided in Ext.R2(b) common judgment dated 21.05.2024 of the learned Single Judge, is not modified or varied either in Ext.R2(c) common order dated 31.05.2024 in R.P.Nos.534 of 2025, 535 of 2025 and 536 of 2025 or in Exts.R2(d) to R2(f) judgments dated 30.06.2024 of the Division Bench in W.A.Nos.787 of 2024, 806 of 2024 and 835 of 2024. The Division Bench dismissed as withdrawn the above writ appeals, by Exts.R2(d) to R2(f) judgments, after recording the submission made by the learned counsel for the appellants (respondents herein) to withdraw the writ appeals with the liberty to avail the alternate remedy.

13. The learned counsel for the appellant Bank contended that the finding of the learned Single Judge in the impugned judgment dated 06.08.2025 that the classification of an account as NPA cannot be agitated before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, and only a judicial review is permissible, is per se arbitrary and illegal, and is against the law laid down by a Division Bench of this Court in Kuruvithadam Agencies (Pvt.) Ltd. and another v. Authorised Officer, Standard Chartered Bank [2021:KER:20923] – judgment dated 28.05.2021 in W.A.No.1584 of 2020. The 2nd petitioner, at no point of time, had claimed the benefit of Exts.P3 and P4 notifications. In the writ petition, no such details are forthcoming. None of the documents produced in the writ petition would also substantiate the said fact. In the reply affidavit filed in the writ petition, the petitioners produced a copy of an e-mail addressed to the Branch, to show that they have obtained Udyam Registration Certificate.

14. On the other hand, the learned Senior Counsel for the respondents-petitioners contended that the reasoning of the learned Single Judge in the impugned judgment dated 06.08.2025 in W.P.(C)No.5466 of 2025 is neither perverse nor patently illegal, warranting an interference of this Court in this intra-court appeal filed under Section 5(i) of the Kerala High Court Act. The judgment of the learned Single Judge is one rendered after taking note of the law laid down by the Apex Court in Pro Knits [(2024) 10 SCC 292] and Shri Shri Swami Samarth Construction and Finance Solution [2025 SCC OnLine SC 1566]. During the pendency of W.P.(C)No.44147 of 2024, the respondents herein filed W.P.(C)No.5466 of 2025. In the light of the filing of W.P.(C)No.5466 of 2025, it was submitted before the learned Single Judge that W.P.(C)No.44147 of 2024 may be dismissed as withdrawn, reserving the liberty of the petitioners (respondents herein) to raise all contentions in W.P.(C)No.5466 of 2025. It was also submitted that S.A.Nos.598 of 2024 and 600 of 2024, pending before the Debts Recovery Tribunal-II, Ernakulam, will be withdrawn. Taking into consideration the above submission, the learned Single Judge dismissed W.P.(C)No.44174 of 2024 as withdrawn, by Annexure A2 judgment dated 18.02.2025, leaving open all contentions and reserving the right of the petitioners to raise those contentions in W.P.(C)No.5466 of 2025. Therefore, the learned Single Judge rightly

entertained W.P.(C)No.5466 of 2025 and rendered the impugned judgment, repelling the contention of the 2nd respondent Bank as to the maintainability of the writ petition, and also the contention that the writ petition is barred by the principles of res judicata and constructive res judicata. The learned Single judge rightly considered the challenge made by the petitioners in W.P.(C)No.5466 of 2025, against the proceedings initiated by the 2nd respondent Bank (appellant herein) under the provisions of the SARFAESI Act and interfered with Exts.P9 and P16 notices issued under Section 13(2) of the said Act and issued consequential directions.

15. In W.P.(C)No.5466 of 2025, the 2nd respondent Bank (appellant herein) filed a counter affidavit dated 24.03.2025, raising the question of maintainability of the writ petition, by contending that the writ petition is barred by the principles of res judicata and constructive res judicata. In the counter affidavit, it was also contended that the writ petition is liable to be dismissed on the ground of suppression of material facts. The averments to that effect are contained in paragraphs 2 and 3 of the counter affidavit, which read thus;

"2. The Writ Petitioners had earlier approached this Hon'ble Court by filing W.P. (C)Nos. 32643 of 2023, 29909 of 2023 and 32498 of 2023. The Writ Petitioners had sought for re-structuring of their loans while challenging the SARFAESI proceedings. Copy of the W.P.(C)No.29909 of 2023 is produced as Ext.R2(a). As per the common judgment dated 21.05.2024, the above writ petitions were dismissed by this Hon'ble Court, holding that the remedy of the Writ Petitioner is to approach the Debts Recovery Tribunal. Copy of the common judgment dated 21.05.2024 in W.P.(C)Nos.32643 of 2023, 29909 of 2023 and 32498 of 2023 is produced as Ext.R2(b). Against the same, the Petitioners had filed a review petition, and this Hon'ble Court, as per common order dated 31.05.2024, dismissed the above review petitions, directing the Debts Recovery Tribunal to consider condonation of delay, treating the period during which the writ petitions were pending before this Hon'ble Court. Copy of the common order dated 31.05.2024 in R.P.Nos.535 of 2024, 535 of 2024 and 536 of 2024 is produced as Ext.R2(c).

(underline supplied)

Thereafter, the writ petitioners had filed appeals before the Division Bench of this Hon'ble Court as W.A. Nos.787 of 2024, 806 of 2024 and 835 of 2024. As per the judgments dated 20.06.2024, the aforesaid appeals were also dismissed by this Hon'ble Court, granting the liberty to avail the alternative remedy. Copy of the judgments dated 20.06.2024 in W.A.Nos.787 of 2024, 806 of 2024 and 835 of 2024 is produced as Ext.R2(d), Ext.R2(e) and Ext.R2(f), respectively. It is humbly submitted that the writ petitioners have suppressed the filing of the above writ petitions, review petitions and appeals before this Hon'ble Court, and on the sole ground of suppression of material facts, the present writ petition is liable to be dismissed.

3. It is also submitted that the present writ petition is also barred by the principles of res judicata and constructive res judicata. The contentions raised in the writ petition have been raised substantially in the earlier writ petition, and in view of Exts.R2(a) to R2(c) judgments, the said contentions are not liable to be raised again, and are barred by the principles of estoppel by judgment. Still further, even if any contention that has not been raised in the earlier writ petition is attempted to be raised by way of this writ petition, the same is also barred by the principles of constructive res judicata."

16. The reliefs sought for in W.P.(C)No.29909 of 2023 filed by the 1st respondent herein [1st petitioner in W.P.(C)No.5466 of 2025], read thus;

"i) To issue a writ of mandamus or any other writ, order or direction directing the 1st respondent not to proceed with steps under the SARFAESI Act already initiated against the petitioner and to grant an opportunity to the petitioner for paying the defaulted installment and interest and to revive the Unit.

ii) To issue a writ of mandamus or any other writ, order or direction directing the 1st respondent to consider and take effective action on Ext.P3 and Ext.P10 representations.

iii) To call for the records leading up to Exhibit P6 and to quash the same by issuing a writ of certiorari or any other appropriate writ, order or direction; and

iv) Pass any other appropriate writ, order or direction which this Hon'ble Court may deem fit to issue, and the petitioner may pray from time to time."

(underline supplied)

17. The interim relief sought for in W.P.(C)No.29909 of 2023 filed by the 1st respondent herein [1st petitioner in W.P.(C)No.5466 of 2025], reads thus;

"For the reasons stated in the writ petition (civil) and in the accompanying affidavit, it is respectfully prayed that this Hon'ble Court may be pleased to pass an order staying all legal proceedings initiated against the petitioner under the provisions of the SARFAESI Act, pending disposal of the above writ petition (civil)."

18. The grounds raised in W.P.(C)No.29909 of 2023 filed by the 1st respondent herein [1st petitioner in W.P.(C)No.5466 of 2025], read thus;

"a) It was in unavoidable circumstances, the unit had to be stopped temporarily. The functioning of the unit has already commenced. When the inspection was conducted by the Bank authorities, the installment was overdue for only a period of one month. The failure of the stock was also temporary, and the same was made good already. The unit is now ready for operation in full swing. Petitioner is ready to pay the defaulted installments and interest. If proceedings under the SARFAESI Act are proceeded with, the unit will suffer loss, and the unit will have to be closed permanently. The employees of the unit will also face hardships.

b) There was no reason for declaring the unit as a NonPerforming Asset. The declaration of the unit as NPA and all the steps taken in pursuance of the said declaration are improper and illegal, and the same is liable to be interfered with by this Hon'ble Court.

c) the 1st respondent is duty-bound to take effective action on Ext.P3 and Ext.P10 representations.

d) Ext.P6 is bad in law since the same does not comply with the guidelines and circulars issued by the Reserve Bank of India.”

(underline supplied)

19. The document marked as Ext.P4 in W.P.(C)No.29909 of 2023 is a copy of a notice dated 02.06.2023 issued by the 2nd respondent Bank, under Section 13(2) of the SARFAESI Act, in respect of the financial assistance/facilities availed by the petitioner-M/s. PDMC Industries. The very same notice is marked as Ext.P9 in W.P.(C)No.5466 of 2025. The document marked as Ext.P6 in W.P.(C)No.29909 of 2023, which has been referred to in ground (d), is a copy of the reply dated 07.07.2023 sent by the Authorised Officer of the Bank, to Ext.P5 objection of the petitioner. The said objection is marked as Ext.P10 in W.P.(C)No.5466 of 2025. Similarly, the document marked as Ext.P3 in W.P.(C)No.32643 of 2023 is a copy of a notice dated 31.07.2023 issued by the 2nd respondent Bank, under Section 13(2) of the SARFAESI Act, in respect of the financial assistance/facilities availed by the petitioner-M/s. PDMC Co Rubber. The very same notice is marked as Ext.P16 in W.P.(C)No.5466 of 2025. By the impugned judgment dated 06.08.2025, the learned Single Judge set aside both Exts.P9 and P16 notices issued by the 2nd respondent Bank (appellant herein), even in the absence of a specific challenge made in W.P.(C)No.5466 of 2025, against Exts.P9 and P16 notices, by seeking a writ of certiorari.

20. By Ext.R2(b) common judgment dated 21.05.2024, the learned Single Judge dismissed W.P.(C)No.29909 of 2023 filed by M/s.PDMC Industries (1st respondent herein), W.P.(C)No.32498 of 2023 filed by Bobby Isaac Mathew (3rd respondent herein) and W.P.(C)No.32643 of 2023 filed by M/s.PDMC Co Rubber (2nd respondent herein) on the ground that, in the light of the categorical pronouncements made by the Apex Court and by this Court in the decisions referred to therein, the writ petitions are not maintainable. Paragraphs 7 to 12 and also the last paragraph of the said decision read thus;

“7. The 1st respondent in all these writ petitions is a private Bank. The Hon'ble Apex Court has held in the judgment in Federal Bank Limited v. Sagar Thomas [(2003) 10 SCC 733] that a writ petition is not maintainable against a private company. Furthermore, the petitioners are challenging proceedings initiated by the 1st respondent-Bank invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

8. It is settled law that no writ would lie against the proceedings initiated by a financial institution under the provisions of the SARFAESI Act. In *United Bank of India v. Satyawati Tondon and others* [(2010) 8 SCC 110], the Hon'ble Apex Court declared that no writ petition shall be entertained against the proceedings initiated under the SARFAESI Act at the instance of a defaulter since the statute provides for an efficacious alternate remedy.

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

10. Following the judgment in *Satyawati Tondon* (supra), a Division Bench of this Court in the judgment in *Anilkumar v. State Bank of India* [2020 (2) KLT 756] declined to exercise jurisdiction under Article 226 of the Constitution of India against the proceedings initiated under the Securitisation Act.

11. In *South Indian Bank Limited v. Naveen Mathew Philip* [2023 (4) KLT 29], the Apex Court held that when the legislature has provided a specific mechanism for appropriate redressal, the powers conferred under Article 226 of the Constitution of India shall be exercised only in extraordinary circumstances.

12. In *Jayakrishnan A. v. Union Bank of India and others - W.P.(C)No.30803 of 2023*, this Court held that writ petition challenging any proceedings under the Securitisation Act is not maintainable since the aggrieved person has an effective and efficacious remedy before the Tribunal constituted under the Act which is competent to adjudicate the issues of fact and law, including statutory violations.

In the light of the categorical pronouncements of law made by the Apex Court and by this Court, the above writ petition is [sic: writ petitions are] not maintainable, and it is dismissed."

21. Seeking review of Ext.R2(b) common judgment dated 21.05.2024, the respondents herein filed R.P.Nos.534 of 2024, 535 of 2024 and 536 of 2024, invoking the provisions under Order XLVII, Rule 1 of the Code of Civil Procedure, 1908. Those review petitions were disposed of by Ext.R2(c) common order dated 31.05.2024, clarifying to the extent that the petitioners will be at liberty to approach the Debts Recovery Tribunal or any other appropriate Forum, in which case the said Tribunal/Forum may consider condonation of delay treating the period during which the writ petitions are pending before this Court as period during which the petitioners are bona fide prosecuting their claims. Ext.R2(c) common order dated 31.05.2024 read thus;

"After arguing the Review Petitions for a considerable time, counsel for the petitioners submits that the petitioners' right to approach the Debts Recovery Tribunal or any other appropriate Forum may be preserved, and unless it is so clarified, the petitioners' remedy is likely to be lost due to delay.

2. In the facts of the case, the judgment dated 21.05.2024 in W.P.(C)Nos.29909,

32643 and 32498 of 2023 is clarified to the extent that the petitioners will be at liberty to approach the Debts Recovery Tribunal or any other appropriate Forum, in which case the said Tribunal/Forum may consider condonation of delay treating the period during which the writ petitions are pending before this Court as period during which the petitioners are bona fide prosecuting their claims.

The Review Petitions are disposed of as above.”

22. Ext.R2(b) common judgment dated 21.05.2024 was under challenge in W.A.Nos.787 of 2024, 806 of 2024 and 835 of 2024 filed by respondents herein, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958. By Exts.R2(d), R2(e) and R2(f) judgments dated 20.06.2024, those writ appeals were dismissed as withdrawn with liberty to avail alternate remedy. The judgments are similarly worded. Ext.R2(d) judgment in W.A.No.787 of 2024, arising out of the judgment dated 21.05.2024 in W.P.(C)No.32643 of 2023, reads thus;

“When the matter is called out, the learned counsel appearing for the appellant seeks permission to withdraw the appeal with the liberty to avail alternate remedy.

In the light of the above submission, the writ appeal is dismissed as withdrawn with the liberty sought.

Pending interlocutory applications, if any, shall stand closed.”

(underline supplied)

23. After Exts.R2(d), R2(e) and R2(f) judgments dated 20.06.2024 of the Division Bench, whereby W.A.Nos.787 of 2024, 806 of 2024 and 835 of 2024 filed by the respondents herein were dismissed as withdrawn with liberty to avail alternate remedy, they filed W.P.(C)No.44147 of 2024, through another counsel, again invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking the following reliefs;

“a) To declare that Section 14 of the SARFAESI Act is violative of Articles 14, 19 and 21 of the constitution and is therefore unconstitutional and void inasmuch as it does not expressly state that the Magistrate shall observe the principles of natural justice;

b) To declare that the Magistrate has no jurisdiction to pass orders under Section 14 of the SARFAESI Act when the validity of the action taken by the Bank under Section 13(2) and 13(4) of the SARFAESI Act is challenged before the High Court of Bombay and the High Court is in seisin of the matter, having issued notice to the respondents;

c) To declare that the various writ petitions and other proceedings which the Petitioner has instituted, as detailed in the Exhibit P12/Chart, do not constitute a Cause of Action Estoppel, nay, estoppel per rem judicatam/res judicata, not even issue estoppel

d) To issue a writ in the nature of prohibition restraining and prohibiting the Respondent Bank, its authorized officer, Court Commissioner, and the Police from dispossessing the Petitioner from their home, the purported security interest, till the W.P.(L)No.30531 of 2024 and W.P.(L)No.30600 of 2024 are disposed of;

e) issue such other appropriate writ order or direction as this Honourable Court may deem fit just and proper to grant on the facts and circumstances of the case.”

24. During the pendency of W.P.(C)No.44147 of 2024, the respondents herein filed W.P.(C)No.5466 of 2025, through their present counsel. On 18.02.2025, when W.P.(C)No.44147 of 2024 came up for consideration, the learned Senior Counsel for the respondents herein submitted that in the light of the filing of W.P.(C)No.5466 of 2025, W.P.(C)No.44147 of 2024 may be dismissed as withdrawn, reserving the liberty of the petitioners to raise all contentions in W.P.(C)No.5466 of 2025. It was also submitted that S.A.Nos.598 of 2024 and 600 of 2024, pending before the Debts Recovery Tribunal-II, Ernakulam, will be withdrawn. Taking into consideration the above submission of the learned Senior Counsel for the petitioners, the learned Single Judge dismissed as withdrawn W.P.(C)No.44174 of 2024, by Annexure A2 judgment dated 18.02.2025, leaving open all contentions and reserving the right of the petitioners to raise those contentions in W.P.(C)No.5466 of 2025. The undertaking given by the petitioners in W.P.(C)No.44174 of 2024 that S.A.Nos. 598 of 2024 and 600 of 2024 pending before the Debts Recovery Tribunal-II, Ernakulam, will be withdrawn, was also recorded. Annexure A2 judgment dated 18.02.2025 in W.P.(C)No.44174 of 2024, reads thus;

“The learned Senior Counsel appearing for the petitioners would submit that in the light of the filing of W.P.(C)No.5466 of 2025, W.P.(C)No.44147 of 2024 may be dismissed as withdrawn, reserving the liberty of the petitioners to raise all contentions in W.P.(C)No.5466 of 2025. It is also submitted that S.A.Nos.598 of 2024 and 600 of 2024, pending before the Debts Recovery Tribunal-II, Ernakulam, will be withdrawn.

2. Taking into consideration of the submission of the learned Senior Counsel appearing for the petitioners, this Writ Petition is dismissed as withdrawn, leaving open all contentions and reserving the right of the petitioners to raise those contentions in W.P.(C)No.5466 of 2025. The undertaking given by the petitioners before this Court that S.A.Nos. 598 of 2024 and 600 of 2024, now pending before the Debts Recovery Tribunal-II, Ernakulam, will be withdrawn is also recorded.”

(underline supplied)

25. As already noticed hereinbefore, the impugned judgment dated 06.08.2025 of the learned Single Judge is one rendered after taking note of the law laid down by the Apex Court in Shri Shri Swami Samarth Construction and Finance Solution [2025 SCC OnLine SC 1566]. In the said decision, a Two-Judge Bench of the

Apex Court observed that a micro, small and medium enterprise, despite finding that its business is failing or that it is unable to pay its debts or accumulation of losses equals to half or more of its entire net worth and classification of its account as non-performing asset is imminent, it would rest on its oars believing that it has no responsibility and that its account will not be classified as non-performing asset because it is the entire obligation of the lending bank/secured creditor to do what the framework requires. The Two-Judge Bench said that it would read and interpret the seemingly confusing terms of the Framework harmoniously to ensure that a right under the Micro, Small and Medium Enterprise Act is not destroyed by the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, or vice versa. The terms of the framework do not prohibit the lending bank/secured creditor (assuming that it has no conscious knowledge that the defaulting borrower is a micro, small and medium enterprise) to classify the account of the defaulting micro, small and medium enterprise as non-performing asset and to even issue the demand notice under section 13(2) of the SARFAESI Act, without such identification of incipient stress in the account of the defaulting borrower (MSME); however, upon receipt of the demand notice, if such borrower in its response under section 13(3A) of the SARFAESI Act asserts that it is a micro, small and medium enterprise and claims the benefit of the said Act, citing reasons supported by an affidavit, the lending bank/secured creditor would then be mandatorily bound to look into such claim keeping further action under the SARFAESI Act in abeyance; and should the claim be found to be worthy of acceptance within the framework of the framework, to act in terms thereof for securing revival and rehabilitation of the defaulting borrower.

26. In paragraph 8 of the decision in *Shri Shri Swami Samarth Construction and Finance Solution* [2025 SCC OnLine SC 1566], the Two-Judge Bench referred to the decision of a co-ordinate Bench in *Pro Knits* [(2024) 10 SCC 292] holding, inter alia, that the notification is binding on the lending banks/secured creditors. The Two-Judge Bench, while dismissing the writ petition on the ground that no case for interference under Article 32 of the Constitution has been made out, made it clear that the petitioning enterprise will be at liberty to pursue its remedy under section 17 of the SARFAESI Act, in accordance with law. After noting the arguments advanced by the learned counsel for the petitioning enterprise at paragraph 3 of the decision, the Two-Judge Bench stated at paragraph 4 of the said decision that the respondents are not required to be issued with notice since the Bench is not persuaded to agree with any of the submissions advanced by the learned counsel for the petitioning enterprise.

27. 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.

28. 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.

29. The reliefs sought for in W.P.(C)No.29909 of 2023 filed by the 1st respondent herein [1st petitioner in W.P.(C)No.5466 of 2025], are extracted hereinbefore at paragraph 17; the interim relief sought for is extracted hereinbefore at paragraph 18; and the grounds raised therein are extracted hereinbefore at paragraph 19. The document marked as Ext.P4 in W.P.(C)No.29909 of 2023 is a copy of a notice dated 02.06.2023 issued by the 2nd respondent Bank, under Section 13(2) of the SARFAESI Act, in respect of the financial assistance/facilities availed by the petitioner-M/s. PDMC Industries. The very same notice is marked as Ext.P9 in W.P.(C)No.5466 of 2025. The document marked as Ext.P6 in W.P.(C)No.29909 of 2023, which has been referred to in ground (d), is a copy of the reply dated 07.07.2023 sent by the Authorised Officer of the Bank to Ext.P5 objection of the petitioner. The said objection is marked as Ext.P10 in W.P.(C)No.5466 of 2025. The document marked as Ext.P3 in W.P.(C)No.32643 of 2023 is a copy of a notice dated 31.07.2023 issued by the 2nd respondent Bank, under Section 13(2) of the SARFAESI Act, in respect of the financial assistance/facilities availed by the petitioner-M/s. PDMC Co Rubber. The very same notice is marked as Ext.P16 in W.P.(C)No.5466 of 2025.

30. By Ext.R2(b) common judgment dated 21.05.2024, the learned Single Judge dismissed W.P.(C)No.29909 of 2023 filed by M/s.PDMC Industries (1st respondent herein), W.P.(C)No.32498 of 2023 filed by Bobby Isaac Mathew (3rd respondent herein) and W.P.(C)No.32643 of 2023 filed by M/s.PDMC Co Rubber (2nd respondent herein) on the ground that, in the light of the categorical pronouncements made by the Apex Court and by this Court in the decisions referred to therein, which includes the decisions referred to hereinbefore, the writ petitions are not maintainable. R.P.Nos.534 of 2024, 535 of 2024 and 536 of 2024 filed seeking review of Ext.R2(b) common judgment were disposed of by Ext.R2(c) common order dated 31.05.2024, clarifying to the extent that the petitioners will be at liberty to approach the Debts Recovery Tribunal or any other appropriate Forum, in which case the said Tribunal/Forum may consider condonation of delay treating the period during which the writ petitions are pending before this Court as period during which the petitioners are bona fide prosecuting their claims. By Exts.R2(d), R2(e) and R2(f) judgments dated 20.06.2024, W.A.Nos.787 of 2024, 806 of 2024 and 835 of 2024 filed by respondents herein against Ext.R2(b) common judgment were dismissed as withdrawn with liberty to avail alternate remedy.

31. It was after Exts.R2(d), R2(e) and R2(f) judgments of the Division Bench, whereby W.A.Nos.787 of 2024, 806 of 2024 and 835 of 2024 were dismissed as withdrawn with liberty to avail alternate remedy, respondents herein filed W.P. (C)No.44147 of 2024, through another counsel, again invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking the reliefs extracted hereinbefore at paragraph 24. During the pendency of W.P.

(C)No.44147 of 2024, the respondents herein filed W.P.(C)No.5466 of 2025, through their present counsel. On 18.02.2025, when W.P.(C)No.44147 of 2024 came up for consideration, the learned Senior Counsel for the respondents herein submitted that in the light of the filing of W.P.(C)No.5466 of 2025, W.P.(C)No.44147 of 2024 may be dismissed as withdrawn, reserving the liberty of the petitioners to raise all contentions in W.P.(C)No.5466 of 2025. It was also submitted that S.A.Nos.598 of 2024 and 600 of 2024, pending before the Debts Recovery Tribunal-II, Ernakulam, will be withdrawn.

32. Taking into consideration the aforesaid submission of the learned Senior Counsel for the petitioners, the learned Single Judge dismissed W.P.(C)No.44174 of 2024 as withdrawn, by Annexure A2 judgment dated 18.02.2025, leaving open all contentions and reserving the right of the petitioners to raise those contentions in W.P.(C)No.5466 of 2025. As already noticed hereinbefore, the dismissal of W.P.(C)Nos.29909 of 2023, 32498 of 2023 and 32643 of 2023 by Ext.R2(b) common judgment dated 21.05.2024 of the learned Single Judge was on the ground that, in the light of the categorical pronouncements made by the Apex Court and by this Court in the decisions referred to therein, which includes the decisions referred to hereinbefore, the writ petitions are not maintainable. After the disposal of R.P.Nos.534 of 2024, 535 of 2024 and 536 of 2024 with the clarification contained in Ext.R2(c) common order dated 31.05.2024, W.A.Nos.787 of 2024, 806 of 2024 and 835 of 2024 filed by respondents herein against Ext.R2(b) common judgment were dismissed as withdrawn by Exts.R2(d), R2(e) and R2(f) judgments dated 20.06.2024 of the Division Bench, with liberty to avail alternate remedy, since learned counsel appearing for the appellant in the respective writ appeals (respondents herein) sought permission to withdraw the appeals with the liberty to avail alternate remedy. In view of the inter-partes judgment on the question of maintainability, which has attained finality, the remedy open to the respondents herein is to approach the Debts Recovery Tribunal, invoking the statutory remedy provided under Section 17 of the SARFAESI Act, instead of filing writ petitions seeking various reliefs. Therefore, the finding of the learned Single Judge in the impugned judgment dated 06.08.2025 that, since the learned Single Judge had expressly left all the contentions of the petitioners open in Annexure A2 judgment dated 18.02.2025 in W.P.(C)No.44147 of 2024, the objections raised by the 2nd respondent Bank as to the maintainability of W.P.(C)No.5466 of 2025 cannot be sustained, is per se arbitrary and legally unsustainable.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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 respondents-petitioners have any grievance against the proceedings initiated by

the secured creditor under Section 14 of the SARFAESI Act, they could have availed the statutory remedy by filing an application under Section 17 of the said Act before the Debts Recovery Tribunal, instead of invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India. At any rate, the learned Single Judge committed a grave error in setting aside Exts.P9 and P16 notices issued by the 2nd respondent Bank (appellant herein) under Section 13(2) of the SARFAESI Act, even in the absence of a specific challenge made in W.P.(C)No.5466 of 2025, against Exts.P9 and P16 notices, by seeking a writ of certiorari.

38. In Kuruvithadam Agencies (Pvt.) Ltd. and another v. Authorised Officer, Standard Chartered Bank [2021:KER: 20923] - judgment dated 28.05.2021 in W.A.No.1584 of 2020, the grievance of the appellants was that the Bank had not followed the guidelines and directives issued by the Reserve Bank of India in the matter of treating the account as Non-Performing Asset. The Division Bench noticed that a reading of Section 13 of the SARFAESI Act makes it categorically clear that Parliament has provided a scheme thereunder, enabling an aggrieved person to ventilate his grievances by resorting to the procedure prescribed thereunder. The grievance of the appellants was that the respondent Bank is not entitled to proceed against them, since the conduct on the part of the Bank in converting the account of the appellants into a Non-Performing Asset is not in accordance with the Reserve Bank of India guidelines. The Division Bench held that it was a subject matter that ought to have been pointed out by the appellants before the Bank itself, since the statute prescribes a modality enabling a party to make a suitable representation. Therefore, the proceedings initiated by the Bank squarely come under the procedure contemplated under Section 13 of the SARFAESI Act, and the appellants have a clear remedy as is statutorily prescribed under the said Act. The question as regards the action initiated by the Bank illegally can be raised by the appellants before the Debt Recovery Tribunal, at the appropriate time, as is prescribed under law, and the Tribunal is vested with ample powers to consider such aspects, regarding the loan account maintained by an aggrieved person with a Bank, the conduct on the part of the Bank in making the account a Non-Performing Asset and the failure on the part of the Bank to follow the Reserve Bank guidelines. That apart, there is a clear remedy of appeal provided under the SARFAESI Act, if aggrieved, on any order passed by the Debt Recovery Tribunal, which thus means, the statute has provided a clear mechanism to tackle all and any situations of an aggrieved person under law, and therefore, a writ court would be slow in interfering with the action initiated by the Bank, especially because the SARFAESI Act was introduced with the avowed object of speedy recovery of amounts, without unnecessary interference of courts.

39. In view of the law laid down in the decision of the Division Bench in Kuruvithadam Agencies (Pvt.) Ltd. [2021:KER:20923] the finding of the learned Single Judge in the impugned judgement dated 06.08.2025 that the classification of an account as NPA cannot be agitated before the Debts Recovery Tribunal

under Section 17 of the SARFAESI Act, and only a judicial review is permissible, is per se arbitrary and legally unsustainable.

40. In *Sobha S. v. Muthoot Finance Limited* [2025 (2) KHC 229 : 2025 SCC OnLine SC 177], 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.

41. In the instant case, the 2nd respondent Bank (appellant herein) is a private company carrying on banking business as a Scheduled Bank. The contention raised by the 2nd respondent Bank in this regard, placing reliance on various decisions of the Apex Court, was not considered by the learned Single Judge in the impugned judgment dated 06.08.2025.

42. In *Devilal Modi v. Sales Tax Officer, Ratlam* [AIR 1965 SC 1150], a Constitution Bench of the Apex Court held that, if the underlying rule of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time, and would be inconsistent with considerations of public policy.

43. 'Henderson Principle' is a foundational doctrine in common law that addresses the issue of multiplicity in litigation. It embodies the broader concept of procedural fairness, abuse of process and judicial efficiency by mandating that all claims and issues that could and ought to have been raised in a previous litigation should not be relitigated in subsequent proceedings. The extended form of res judicata, known as constructive res judicata, contained in Section 11, Explanation VII of the Code of Civil Procedure, 1908, originates from this principle.

44. In *Henderson v. Henderson* [(1843) 3 Hare 999], the English Court of Chancery speaking through Sir James Wigram, Vice-Chancellor, held that where a given matter becomes the subject of litigation and the adjudication of a court of competent jurisdiction, the parties so litigating are required to bring forward their whole case. Once the litigation has been adjudicated by a Court of competent jurisdiction, the same parties will not be permitted to reopen the lis in respect of issues which might have been brought forward as part of the subject in contest but were not, irrespective of whether the same was due to any form of negligence, inadvertence, accident or omission. It was further held that the principle of res judicata applies not only to points upon which the Court was called upon by the parties to adjudicate and pronounce a judgment, but also to every possible or probable point or issue that properly belonged to the subject of

litigation and the parties ought to have brought forward at the time.

45. The above proposition of law came to be known as the 'Henderson Principle' and underwent significant evolution, adapting to changing judicial landscapes and procedural requirements. The House of Lords in *Johnson v. Gore Wood and Co.* [(2002) 2 A.C. 1], upon examining the 'Henderson Principle', authoritatively approved it. In *Virgin Atlantic Airways Ltd. v. Zodiac Seats UK Ltd.* [(2014) A.C. 160], Lord Sumption JSC further expounded the 'Henderson Principle' as although separate and distinct from cause of action estoppel or *res judicata* yet having the same underlying public interest that there should be finality in litigation and that a party should not be twice vexed in the same matter. Even in a common law action, it was said by Blackburn, J. in *Newington v. Levy* [(1870) L.R. 6 C.P. 180] that the doctrine of *res judicata* applies to all matters which existed at the time of giving of the judgment and which the party had an opportunity of bringing before the Court.

46. The 'Henderson Principle' was approvingly referred to and applied by a Three-Judge Bench of the Apex Court in *State of U.P. v. Nawab Hussain* [(1977) 2 SCC 806] as the underlying principle for *res judicata* and constructive *res judicata* for assuring finality to litigation. The Three-Judge Bench found that the same set of facts may give rise to two or more causes of action. If, in such a case, a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. The Courts have therefore treated such a course of action as an abuse of its process. *Res judicata* for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them. This is, therefore, another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of *res judicata* by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has sometimes been referred to as constructive *res judicata*, which, in reality, is an aspect or amplification of the general principle.

47. In *Celir LLP v. Sumati Prasad Bafna* [2024 SCC OnLine SC 3727], a decision relied on by the learned counsel for the appellant-2nd respondent Bank, a Two-Judge Bench of the Apex Court held that the fundamental policy of the law is that there must be finality to litigation. Multiplicity of litigation benefits not the litigants whose rights have been determined, but those who seek to delay the enforcement of those rights and prevent them from reaching the rightful beneficiaries of the adjudication. The 'Henderson Principle', in the same manner as the principles underlying *res judicata*, is intended to ensure that grounds of attack or defence in litigation must be taken in one of the same proceedings. A party that avoids doing so does it at its own peril. In deciding as to whether a matter might have been urged in the earlier proceedings, the court must ask

itself as to whether it could have been urged. In deciding whether the matter ought to have been urged in the earlier proceedings, the court will have due regard to the ambit of the earlier proceedings and the nexus which the matter bears to the nature of the controversy. In holding that a matter ought to have been taken as a ground of attack or defence in the earlier proceedings, the court is indicating that the matter is of such a nature and character and bears such a connection with the controversy in the earlier case that the failure to raise it in that proceeding would debar the party from agitating it in the future. The doctrine itself is based on public policy flowing from the age-old legal maxim *interest reipublicae ut sit finis litium*, which means that in the interest of the State, there should be an end to litigation and no party ought to be vexed twice in a litigation for one and the same cause.

47.1. In *Celir LLP* [2024 SCC OnLine SC 3727], the Apex Court reiterated that the 'Henderson Principle' is a core component of the broader doctrine of abuse of process, aimed at enthralling in the parties a sense of sanctity towards judicial adjudications and determinations. It ensures that litigants are not subjected to repetitive and vexatious legal challenges. At its core, the principle stipulates that all claims and issues that could and should have been raised in an earlier proceeding are barred from being raised in subsequent litigation, except in exceptional circumstances. This rule not only supports the finality of judgments but also underscores the ideals of judicial propriety and fairness.

47.2. In *Celir LLP* [2024 SCC OnLine SC 3727], the Apex Court noticed that there are four situations where, in second proceedings between the same parties, doctrine *res judicata* as a corollary of the principle of abuse of process may be invoked; (i) cause of action estoppel, where the entirety of a decided cause of action is sought to be relitigated; (ii) issue estoppel or, 'decided issue estoppel', where an issue is sought to be relitigated, which has been raised and decided as a fundamental step in arriving at the earlier judicial decision; (iii) extended or constructive *res judicata*, i.e., 'unraised issue estoppel', where an issue is sought to be litigated which could, and should, have been raised in a previous action but was not raised; (iv) a further extension of the aforesaid to points not raised in relation to an issue in the earlier decision, as opposed to issues not raised in relation to the decision itself. As part of the broader rule against abuse of process, the 'Henderson Principle' is rooted in the idea of preventing the judicial process from being exploited in any manner that tends to undermine its integrity. This idea of preventing abuse of judicial process is not confined to specific procedure rules, but rather aligned to a broader purport of giving *quietus* to litigation and finality to judicial decisions. The essence of this rule is that litigation must be conducted in good faith, and parties should not engage in procedural tactics that fragment disputes, prolong litigation, or undermine the outcomes of such litigation. It is not a rigid rule but rather a flexible principle to prevent oppressive, unfair, or detrimental litigation.

47.3. In *Celir LLP* [2024 SCC OnLine SC 3727], the Apex Court held that

piecemeal litigation where issues are deliberately fragmented across separate proceedings to gain an unfair advantage is in itself a facet of abuse of process of law and would also fall foul of the 'Henderson Principle'. Merely because one proceeding initiated by a party differs in some aspects from another proceeding or happens to be before a different forum, will not make the subsequent proceeding distinct in nature from the former, if the underlying subject matter or the seminal issues involved remains substantially similar to each other or connected to the earlier subject matter by a certain degree, then such proceeding would tantamount to 'relitigating' and the 'Henderson Principle' would be applicable. Parties cannot be allowed to exploit procedural loopholes and different fora to revisit the same matters they had deliberately chosen not to pursue earlier. Thus, where a party deliberately withholds certain claims or issues in one proceeding with the intention to raise them in a subsequent litigation disguised as a distinct or separate remedy or proceeding from the initial one, such subsequent litigation will also fall foul of the 'Henderson Principle'. Similarly, where a plea or issue was raised in earlier proceedings but later abandoned, it is deemed waived and cannot be relitigated in subsequent proceedings. Allowing such pleas to be resurrected in later cases would not only undermine the finality of judgments but also incentivize strategic behaviour, where parties could withdraw claims in one case with the intention of reintroducing them later. Abandonment signifies acquiescence, barring its reconsideration in subsequent litigation. This ensures that judicial processes are not misused for tactical advantage and that litigants are held accountable for their procedural choices. Parties must litigate diligently and in good faith, presenting their entire case at the earliest opportunity.

47.4. In *Celir LLP* [2024 SCC OnLine SC 3727], the Apex Court held 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.

48. As laid down by a Three-Judge Bench of the Apex Court in *Nawab Hussain* [(1977) 2 SCC 806], as the underlying principle for *res judicata* and constructive *res judicata* for assuring finality to litigation. The same set of facts may give rise to two or more causes of action. If, in such a case, a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. The Courts have therefore treated such a course of action as an abuse of its process. *Res judicata* for this purpose is not confined to the issues which the court is actually

asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them. This is, therefore, another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has sometimes been referred to as constructive res judicata, which, in reality, is an aspect or amplification of the general principle.

49. As reiterated by the Apex Court in Celir LLP [2024 SCC OnLine SC 3727], the 'Henderson Principle' is a core component of the broader doctrine of abuse of process, aimed at enthusing in the parties a sense of sanctity towards judicial adjudications and determinations. It ensures that litigants are not subjected to repetitive and vexatious legal challenges. At its core, the principle stipulates that all claims and issues that could and should have been raised in an earlier proceeding are barred from being raised in subsequent litigation, except in exceptional circumstances. This rule not only supports the finality of judgments but also underscores the ideals of judicial propriety and fairness.

50. 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.

51. Therefore, after the dismissal of W.P.(C)Nos.29909 of 2023, 32498 of 2023 and 32643 of 2023 by Ext.R2(b) common judgment dated 21.05.2024 of the learned Single Judge on the ground that, in the light of the categorical pronouncements made by the Apex Court and by this Court in the decisions referred to therein, which includes the decisions in Satyawati Tondon [(2010) 8 SCC 110] and Naveen Mathew Philip [(2023) 17 SCC 311], the writ petitions are not maintainable, and Exts.R2(d), R2(e) and R2(f) judgments dated 20.06.2024 of the Division Bench, whereby W.A.Nos.787 of 2024, 806 of 2024 and 835 of 2024 filed by respondents herein against Ext.R2(b) common judgment were dismissed as withdrawn, with liberty to avail alternate remedy, since learned counsel appearing for the appellant in the respective writ appeals (respondents herein) sought permission to withdraw the appeals with the liberty to avail alternate remedy, the respondents herein are not legally entitled invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India seeking interference in the proceedings initiated by the appellant-2nd respondent Bank

under the provisions of the SARFAESI Act, instead of invoking the statutory remedy provided under Section 17 of the said Act before the Debts Recovery Tribunal. Therefore, the learned Single Judge ought to have dismissed W.P. (C)No.5466 of 2025, as not maintainable and directed the respondents-writ petitioners to approach the Debts Recovery Tribunal, invoking the statutory remedy provided under Section 17 of the SARFAESI Act.

In the above circumstances, this writ appeal is allowed by setting aside the impugned judgment dated 06.08.2025 of the learned Single Judge in W.P. (C)No.5466 of 2025, and the said writ petition is dismissed as not maintainable under Article 226 of the Constitution of India; however, without prejudice to the right of the respondents-writ petitioners, in accordance with law, to approach the Debts Recovery Tribunal, raising appropriate legal and factual contentions.