

(2026) 03 KL CK 0743

In the High Court Of Kerala

Case No : Writ Appeal No. 614 Of 2026

Union Bank Of India, Represented By Its Authorised Officer	APPELLANT
Vs	
Baby John	RESPONDENT

Date of Decision : 10-03-2026

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227
Kerala High Court Act, 1958 — Section 5(i)
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security
Interest Act, 2002 — Section 14, 17, 18, 18(1)

Citation : (2026) 03 KL CK 0743

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

Bench : Division Bench

Advocate : ASP.Kurup, Sadchith.P.Kurup, Siva Suresh, B.Sreedevi, Athira
Vijayan, Akshara Ravi, V. K. Peer Mohamed Khan

Final Decision : Allowed

Judgement

Anil K. Narendran, J

1. The respondent in W.P.(C)No.5937 of 2026 is before this Court in this writ appeal, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958, challenging the interim orders dated 16.02.2026 and 05.03.2026 of the learned Single Judge in that writ petition. The respondents herein-petitioners filed the said writ petition, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking the following relief;

"1) Issue appropriate orders on writ petition, order or direction by ordering stay of further proceedings under the SARFAESI Act, including proceedings initiated under Section 14, as per the order of Chief Judicial Magistrate Court, Thiruvananthapuram in M.C.No.775 of 2023 against the petitioners and the properties, until the time Appeal vide Diary No.426/2026 filed before Debts Recovery Appellate Tribunal, Chennai, as per Ext.P8, is disposed of after hearing the matter."

2. Going by the averments in the writ petition, the petitioners availed two housing loans for Rs.20,00,000/- each from the Peroorkada Branch of Union Bank of India on 08.08.2017 and 23.12.2021. On account of the default in repayment, the loan accounts were classified as Non-performing Asset (NPA) on 21.02.2023 and the Bank initiated recovery measures under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The said proceedings were under challenge before this Court in various writ petitions filed under Article 226 of the Constitution of India, an original petition filed under Article 227 of the Constitution of India and also in securitisation applications filed before the Debts Recovery Tribunal-2, Ernakulam, under Section 17 of the SARFAESI Act. In order to take physical possession of the secured asset, the Bank initiated proceedings before the Chief Judicial Magistrate Court, Thiruvananthapuram, under Section 14 of the SARFAESI Act, as M.C.No.775 of 2023. S.A.No.614 of 2023 filed by the petitioners under Section 17 of the SARFAESI Act, challenging the securitisation proceedings initiated by the Bank, ended in dismissal by Ext.P1 order dated 27.05.2025 of the Debts Recovery Tribunal-2, Ernakulam with a cost of Rs.10,000/- to the Bank. Challenging Ext.P1 order in S.A.No.614 of 2023, the petitioners filed an appeal before the Debts Recovery Appellate Tribunal, Chennai, invoking the provisions under Section 18(1) of the SARFAESI Act, as evidenced by Ext.P8 case filing receipt dated 12.02.2026 issued from the office of the Debts Recovery Appellate Tribunal. On the very next day, i.e., on 13.02.2026, the petitioners have chosen to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India, by filing W.P.(C)No.5937 of 2026, seeking the aforesaid relief.

3. In W.P.(C)No.5937 of 2026, which was filed on 13.02.2026, the respondent Bank filed a counter affidavit dated 16.02.2026, opposing the relief sought for, producing therewith Exts.R1A to R1L documents. The counter affidavit was presented on 16.02.2026.

4. On 16.02.2026, when W.P.(C)No.5937 of 2026 came up for admission, the learned Single Judge passed an interim order, which reads thus;

"The learned counsel for the petitioners states that they have deposited an amount of Rs.50,000/- (Rupees Fifty thousand only) with the respondent Bank today.

2. In view of the afore submission, the learned counsel for the respondent Bank to get instructions.

There will be an interim stay of all further proceedings against the petitioners for a period of two weeks."

5. On 05.03.2026, when the writ petition came up for consideration, the learned Single Judge posted the matter to 30.03.2026 and extended the interim order till then. The interim order dated 05.03.2026 of the learned Single Judge reads

thus;“Post on 30.03.2026. Interim order is extended till then.”

6. Challenging the interim orders dated 16.02.2026 and 05.03.2026 of the learned Single Judge in W.P.(C)No.5937 of 2026, the appellant-respondent is before this Court in this writ appeal.

7. We heard arguments of the learned counsel for the appellant-respondent Bank and also the learned counsel for the respondents-petitioners.

8. The learned counsel for the appellant-respondent Bank would contend that the learned Single Judge committed a grave error in granting an interim order staying all further proceedings initiated against the respondents-petitioners under the provisions of the SARFAESI Act, when the earlier writ petition, i.e., W.P. (C)No.19393 of 2023 filed by respondents 1 and 2 herein, was dismissed by Ext.R1A judgment dated 11.08.2023 of a learned Single Judge, 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 their right to work out remedies in accordance with law. As pointed out in the counter affidavit filed on 16.02.2026 in W.P.(C)No.5937 of 2026, even after the dismissal of W.P. (C)No.19393 of 2023, the respondents herein invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India in W.P.(C)Nos.7285 of 2024 and 24969 of 2025 and the supervisory jurisdiction under Article 227 in O.P. (DRT)No.18 of 2024 and they failed to comply with the conditions stipulated in the orders/judgments of this Court regarding the payment of the amounts due to the appellant- respondent Bank in respect of the SARFAESI proceedings. They have also invoked the statutory remedy provided under Section 17 of the SARFAESI Act by filing S.A.Nos.614 of 2023 and 104 of 2026 before the Debts Recovery Tribunal-2, Ernakulam. The specific contention raised in the counter affidavit filed in W.P.(C)No.5937 of 2026 that the respondents herein, who have availed the statutory remedy, are not entitled to any discretionary remedy under Article 226 of the Constitution of India, was not considered by the learned Single Judge while granting the interim orders dated 16.02.2026 and 05.03.2026. The learned counsel would also point out, based on the instructions already received, that the appeal filed by the respondents-petitioners before the Debts Recovery Appellate Tribunal, Chennai, under Section 18(1) of the SARFAESI Act, challenging Ext.P1 order dated 27.05.2025 of the Debts Recovery Tribunal-2, Ernakulam, in S.A.No.614 of 2023, is one filed without the statutory pre-deposit under the second proviso to Section 18(1) of the SARFAESI Act, along with an interlocutory application for complete waiver of statutory pre- deposit. In view of the law laid down by this Court in *Union Bank of India v. M/s. Suwique Traders* [2025 (4) KHC SN 30 : 2025 (4) KLT 455], a complete waiver of pre-deposit is beyond the scope of the provisions of Section 18(1) of the SARFAESI Act. The Appellate Tribunal, which is a creature of the statute, cannot entertain, i.e., give judicial consideration of an appeal filed under Section 18 and the interlocutory application filed under the third proviso to Section 18(1) for waiver of pre-deposit, as stipulated in the

second proviso to Section 18(1), unless the appellant has deposited with the Appellate Tribunal twenty-five percent of the debt referred to in the second proviso to Section 18(1). The respondents-petitioners have intentionally suppressed the said material fact from the notice of this Court, in order to secure an interim order against the SARFAESI proceedings initiated against them. The interim orders of the learned Single Judge, which are under challenge in this writ appeal squarely fall within the scope of an appealable order 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].

9. On the other hand, the learned counsel for the respondents-petitioners would submit that, by the impugned interim orders, the learned Single Judge has granted a breathing time to the petitioners to move the appeal filed before the Debts Recovery Appellate Tribunal, Chennai, as evidenced by Ext.P8 case filing receipt dated 12.02.2026, challenging Ext.P1 order dated 27.05.2025 of the Debts Recovery Tribunal-2, Ernakulam, in S.A.No.614 of 2023. In the writ petition, the petitioners have stated that they had earlier approached this Court in various writ petitions and an O.P.(DRT) challenging the SARFAESI proceedings initiated by the Bank in respect of the very same loan accounts. The learned counsel would submit that, as pointed out by the learned counsel for the appellant-respondent Bank, the appeal filed by the respondents-petitioners before the Debts Recovery Appellate Tribunal, Chennai, challenging Ext.P1 order dated 27.05.2025 of the Debts Recovery Tribunal-2, Ernakulam in S.A.No.614 of 2023, is an appeal filed without any statutory pre- deposit, which is accompanied by an interlocutory application invoking the provisions under the third proviso to Section 18(1) of the SARFAESI Act for complete waiver of statutory pre-deposit. The said fact is not disclosed in W.P.(C)No.5937 of 2026, which is not intentional.

10. As already noticed hereinbefore, the respondents- petitioners have approached this Court in W.P.(C)No.5937 of 2026, invoking the extraordinary jurisdiction under Article 226 of the Constitution of India, to stay the proceedings initiated by the appellant-respondent Bank under the provisions of the SARFAESI Act, including the proceedings initiated under Section 14 of the said Act, based on the orders passed by the Chief Judicial Magistrate Court, Thiruvananthapuram, in M.C.No.775 of 2023, until the appeal, vide Diary No.426 of 2026, filed before the Debts Recovery Appellate Tribunal, Chennai, as evidenced by Ext.P8 case filing receipt dated 12.02.2026, is disposed of after hearing the matter.

11. As pointed out by the learned counsel for the appellant-respondent Bank, the respondents-petitioners have chosen to file the aforesaid appeal before the Debts Recovery Appellate Tribunal, Chennai, without the statutory pre-deposit under the second proviso to Section 18(1) of the SARFAESI Act, along with an interlocutory application for complete waiver of statutory pre- deposit. The said fact is not disputed by the learned counsel for the respondents-

petitioners, who submitted that the said fact is not disclosed in W.P. (C)No.5937 of 2026, which is not intentional.

12. In *Narayan Chandra Ghosh v. Uco Bank* [(2011) 4 SCC 548], the Apex Court noticed that when a statute confers a right of appeal, while granting the right, the legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the SARFAESI Act, the conditions hedged in the second proviso to Section 18(1) cannot be said to be onerous. Thus, the Apex Court held that the requirement of pre-deposit under the second proviso to Section 18(1) is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the statute. Therefore, the Apex Court concluded that the deposit under the second proviso to Section 18(1), being a condition precedent for preferring an appeal under the said section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement.

13. In *Narayan Chandra Ghosh* [(2011) 4 SCC 548], before the Apex Court, the argument of the learned counsel for the appellant was that as the amount of debt due had not been determined by the Debts Recovery Tribunal, the appeal could be entertained by the Appellate Tribunal without insisting on pre-deposit. The Apex Court found the said argument as fallacious. The Apex Court noticed that, under the second proviso to Section 18(1) of the SARFAESI Act, the amount of fifty per cent, which is required to be deposited by the borrower, is computed either with reference to the debt due from him as claimed by the secured creditors or as determined by the Debts Recovery Tribunal, whichever is less. Obviously, where the amount of debt is yet to be determined by the Debts Recovery Tribunal, the borrower, while preferring an appeal, would be liable to deposit fifty per cent of the debt due from him as claimed by the secured creditors. Therefore, the condition of pre-deposit being mandatory, a complete waiver of deposit by the appellant, with the Appellate Tribunal, was beyond the provisions of the Act, as is evident from the second and third provisos to the Section 18(1). At best, the Appellate Tribunal could have, after recording the reasons, reduced the amount of deposit of fifty per cent to an amount not less than twenty-five per cent of the debt referred to in the second proviso. Therefore, the Apex Court was convinced that the order of the Appellate Tribunal, entertaining the appellant's appeal without insisting on pre-deposit was clearly unsustainable and, therefore, the decision of the High Court in setting aside the same cannot be flawed.

14. In *M/s. Suwique Traders* [2025 (4) KHC SN 30 : 2025 (4) KLT 455], a Division Bench of this Court, in which both of us are parties, held that in view of the provisions under Section 18(1) of the SARFAESI Act and the law laid

down by the Apex Court in Narayan Chandra Ghosh [(2011) 4 SCC 548] there is an absolute bar to the entertainment of an appeal under Section 18 unless the condition precedent, as stipulated in the second proviso to Section 18(1), is fulfilled. As held by the Apex Court, the requirement of pre-deposit under the second proviso to Section 18(1) is mandatory, and the Debts Recovery Appellate Tribunal, which is a creature of the statute, cannot refuse to give full effect to the provisions of Section 18(1). In view of the provisions contained in the second and third provisos to Section 18(1), a complete waiver of pre-deposit is beyond the provisions of Section 18(1). In an appeal filed under Section 18, which is accompanied by an application for waiver of pre-deposit, invoking the provisions under the third proviso to Section 18(1), the Appellate Tribunal can, for reasons to be recorded in writing, reduce the pre-deposit to not less than twenty-five per cent of the debt referred to in the second proviso to Section 18(1).

15. In M/s. Suwique Traders [2025 (4) KHC SN 30 :2025 (4) KLT 455], the Division Bench held that, when complete waiver of pre-deposit is beyond the provisions of Section 18(1) of the SARFAESI Act, it cannot be contended that, a person aggrieved by any order made by the Debts Recovery Tribunal under Section 17, can prefer an appeal before the Appellate Tribunal, within the time limit specified in Section 18(1), along with an application for complete waiver of pre-deposit under the second proviso to Section 18(1), after remitting only the fee provided under Section 18(1), since the Appellate Tribunal cannot grant complete waiver of pre-deposit, which is beyond the scope of the provisions contained in the second and third provisos to Section 18(1). In that view of the matter, in an appeal filed under Section 18 of the Act, which is accompanied by an application invoking the provisions of the third proviso to Section 18(1) for waiver of pre-deposit, as stipulated in the second proviso to Section 18(1), the appellant has to deposit with the Appellate Tribunal twenty-five per cent of the debt referred to in the second proviso to Section 18(1). The Appellate Tribunal cannot entertain, i.e., give judicial consideration of an appeal filed under Section 18 and the interlocutory application filed under the third proviso to Section 18(1) for waiver of pre-deposit, as stipulated in the second proviso to Section 18(1), unless the appellant has deposited with the Appellate Tribunal twenty-five per cent of the debt referred to in the second proviso to Section 18(1). Therefore, the Division Bench found absolutely no merit in the submission of the learned counsel for the respondents-petitioners therein that the respondents therein are required to remit only the prescribed fee as provided under Section 18(1) of the Act, at the time of preferring the appeal and the question of deposit with the Appellate Tribunal the pre-deposit provided under the second proviso to Section 18(1) arises only on an order being passed by the Appellate Tribunal on the application for waiver.

16. In view of the law laid down by this Court in M/s. Suwique Traders [2025 (4) KHC SN 30 : 2025 (4) KLT 455], the Appellate Tribunal cannot entertain, i.e., give judicial consideration of an appeal filed under Section 18 and the

interlocutory application filed under the third proviso to Section 18(1) for waiver of pre-deposit, as stipulated in the second proviso to Section 18(1), unless the appellant has deposited with the Appellate Tribunal twenty-five per cent of the debt referred to in the second proviso to Section 18(1). When the appeal filed by the respondents-petitioners, vide Diary No.426 of 2026, before the Debts Recovery Appellate Tribunal, Chennai, invoking the provisions under Section 18 of the SARFAESI Act, challenging Ext.P1 order dated 27.05.2025 of the Debts Recovery Tribunal-2, Ernakulam, in S.A.No.614 of 2023, is accompanied by an interlocutory application for complete waiver of pre-deposit, without depositing twenty-five per cent of the debt referred to in the second proviso to Section 18(1), the learned Single Judge committed a grave error in granting the interim orders dated 06.02.2026 and 05.03.2026 staying further proceedings against the respondents-petitioners in the SARFAESI proceedings initiated by the appellant-respondent Bank.

17. As already noticed hereinbefore, the counter affidavit of the respondent Bank in W.P.(C)No.5937 of 2026 was placed on record on 16.02.2026. In the said counter affidavit, the respondent Bank has pointed out Ext.R1A judgment dated 11.08.2023 of a learned Single Judge in W.P.(C)No.19393 of 2023, whereby the writ petition filed by respondents 1 and 2 herein to pay the overdue amount in installments and regularise the loan accounts was dismissed without prejudice to their right to work out remedies in accordance with law. The said judgment of the learned Single Judge was one rendered taking note of the law laid down by the Apex Court in Naveen Mathew Philip [(2023) 17 SCC 311]. Thereafter, the respondents herein filed S.A.No.614 of 2023 before the Debts Recovery Tribunal-2, Ernakulam, challenging the SARFAESI proceedings initiated by the Bank, in which the Debts Recovery Tribunal passed an order of stay dated 06.11.2023, whereby they were directed to deposit a sum of Rs.3,00,000/- on or before 21.11.2023 and a further sum of Rs.3,00,000/- on or before 21.12.2023, failing which, the order of stay will stand vacated. The respondents herein challenged the said order in O.P.(DRT)No.18 of 2024 filed before this Court invoking the supervisory jurisdiction under Article 227 of the Constitution of India. That O.P.(DRT) was disposed of by Ext.R1B judgment dated 15.01.2024, whereby the learned Single Judge extended the time for payment of the second installment of Rs.3,00,000/- till 31.01.2024. Seeking enlargement of time for payment of the second installment, the respondents herein filed I.A.No.1 of 2024 in O.P.(DRT)No.18 of 2024, which ended in dismissal by Ext.R1C order dated 16.02.2024. Thereafter, the 1st respondent herein filed W.P.(C)No.7285 of 2024 against the coercive steps taken by the Bank under the provisions of the SARFAESI Act, which was disposed of by Ext.R1D judgment dated 05.03.2024, whereby he was granted an opportunity to clear the overdue amount of Rs.75,000/- in three equal and consecutive monthly installments, commencing on or before 25.03.2024, along with accruing interest and other bank charges and also the regular monthly installments. The 1st respondent herein filed I.A.No.1 of 2024 seeking enlargement of time, which

was dismissed by Ext.R1E order dated 16.12.2024, wherein the learned Single Judge noticed that in spite of more than eight months he could not pay the overdue amount as directed by the Court. It is thereafter, that the Debts Recovery Tribunal dismissed S.A.No.614 of 2023 by Ext.P1 order dated 27.05.2025. Challenging Ext.P1 order, the 1st respondent herein filed O.P. (DRT)No.128 of 2025 before this Court, invoking the supervisory jurisdiction under Article 227 of the Constitution of India, which was dismissed as not pressed vide Ext.R1F judgment dated 20.05.2025. When the Bank issued dispossession notice dated 21.06.2025, the 1st respondent herein challenged the same by filing W.P.(C)No.24969 of 2025, in which the learned Single Judge granted Ext.R1G interim order, on payment of Rs.10,00,000/-, within a period of one month. The said interim order was under challenge in W.A.No.1694 of 2025, which was allowed by Ext.R1H judgment dated 29.07.2025, whereby the said interim order of the learned Single Judge was set aside. Thereafter, W.P.(C)No.24969 of 2025 was dismissed by the learned Single Judge, vide Ext.R1I judgment dated 11.08.2025, without prejudice to his right to challenge the measures taken by the Bank, as provided under the SARFAESI Act. Much after the dismissal of W.P.(C)No.24969 of 2025, the respondents herein filed S.A.No.104 of 2026 before the Debts Recovery Tribunal-2, Ernakulam, on 11.02.2026, challenging the proceedings initiated by the Bank under Section 14 of the SARFAESI Act. The said securitisation application, which is marked as Ext.R1J, was accompanied by Ext.R1K stay petition, i.e., I.A.No.665 of 2026. The Bank entered appearance in S.A.No.104 of 2026 and filed Ext.R1L counter affidavit dated 13.02.2026 in I.A.No.665 of 2026, wherein it was pointed out that the total amount outstanding in the loan accounts, as on 31.01.2026, comes to Rs.15,42,014.73 with accrued interest and expenses.

18. 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.

19. 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. 20. In the instant case, as already noticed hereinbefore, the earlier writ petition, i.e., W.P.(C)No.19393 of 2023 filed by respondents 1 and 2 herein, was dismissed by Ext.R1A judgment dated 11.08.2023 of a learned Single Judge, after taking note of the law laid down by the Apex Court in *Naveen Mathew Philip* [(2023) 17 SCC 311], without prejudice their right to work out remedies in accordance with law. Even after the dismissal of W.P.(C)No.19393 of 2023, the respondents herein invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India in W.P. (C)Nos.7285 of 2024 and 24969 of 2025 and the supervisory jurisdiction under Article 227 in O.P.(DRT)No.18 of 2024 and they failed to comply with the conditions stipulated in the orders/judgments of this Court regarding the

payment of the amounts due to the appellant-respondent Bank in respect of the SARFAESI proceedings. They have also invoked the statutory remedy provided under Section 17 of the SARFAESI Act by filing S.A.Nos.614 of 2023 and 104 of 2026 before the Debts Recovery Tribunal-2, Ernakulam. In such circumstances, the learned Single Judge committed a grave error while granting the interim order dated 16.02.2026 in W.P.(C)No.5937 of 2026 staying all further proceedings initiated against the respondents-petitioners under the provisions of the SARFAESI Act, for a period of two weeks, and thereafter, extending the said interim order on 05.03.2026 till 30.03.2026.

21. On the question of maintainability of a writ appeal under Section 5(i) of the Kerala High Court Act, against an interim order passed by a learned Single Judge during the pendency of the writ petition, the Larger Bench 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.

22. 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.

23. In the instant case, by the impugned orders dated 16.02.2026 and 05.03.2026 in W.P.(C)No.5937 of 2026, the learned Single Judge stayed all further proceedings against the respondents-petitioners in the SARFAESI proceedings initiated by the appellant-respondent bank, including the proceedings initiated under Section 14 of the said Act, based on the orders passed by the Chief Judicial Magistrate Court, Thiruvananthapuram in M.C.No.775 of 2023. The said interim orders, whereby the learned Single Judge

interfered with the coercive steps initiated by the secured creditor, against the respondents-petitioners, under the provisions of the SARFAESI Act, without taking into consideration the specific contentions raised in the counter affidavit dated 16.02.2026 filed by the respondent bank in W.P.(C)No.5937 of 2026, which substantially affects the right of the appellant- respondent bank to proceed with the coercive steps under the provisions of the SARFAESI Act, based on the orders passed by the Chief Judicial Magistrate Court, Thiruvananthapuram in M.C.No.775 of 2023, is an order appealable under Section 5(i) of the Kerala High Court Act, in view of the law laid down by the Larger Bench in K.S. Das [1992 (2) KLT 358].

24. As already noticed hereinbefore, the appeal filed by the respondents-petitioners before the Debts Recovery Appellate Tribunal, Chennai, under Section 18(1) of the SARFAESI Act, challenging Ext.P1 order dated 27.05.2025 of the Debts Recovery Tribunal-2, Ernakulam, in S.A.No.614 of 2023, is one filed without the statutory pre-deposit under the second proviso to Section 18(1) of the SARFAESI Act, along with an interlocutory application for complete waiver of statutory pre-deposit. In view of the law laid down by this Court in M/s. Suwique Traders [2025 (4) KHC SN 30 : 2025 (4) KLT 455], a complete waiver of pre- deposit is beyond the scope of the provisions of Section 18(1) of the SARFAESI Act. The Appellate Tribunal, which is a creature of the statute, cannot entertain, i.e., give judicial consideration of an appeal filed under Section 18 and the interlocutory application filed under the third proviso to Section 18(1) for waiver of pre- deposit, as stipulated in the second proviso to Section 18(1), unless the appellant has deposited with the Appellate Tribunal twenty-five percent of the debt referred to in the second proviso to Section 18(1). The respondents-petitioners have intentionally suppressed the said material fact from the notice of this Court, in order to secure an interim order in W.P. (C)No.5937 of 2026, against the SARFAESI proceedings initiated against them.

25. 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.

26. 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 larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in 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.

27. 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 merits of the matter.

28. We deprecate in the strongest words, the conduct of the respondents-petitioners in invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with 'soiled hands', suppressing material facts from the notice of this Court. At any rate, in view of the law laid down in the decisions referred to hereinbefore, the impugned orders dated 16.02.2026 and 05.03.2026 in W.P.(C)No.5937 of 2026, whereby the learned Single Judge interfered with the coercive steps initiated by the secured creditor, against the respondents-petitioners, under the provisions of the SARFAESI Act, which substantially affects the right of the appellant-respondent bank to proceed with the coercive steps under the provisions of the SARFAESI Act, based on the orders passed by the Chief Judicial Magistrate Court, Thiruvananthapuram in M.C.No.775 of 2023, cannot be sustained in law.

In the result, this writ appeal is allowed by setting aside the interim orders dated 16.02.2026 and 05.03.2026 of the learned Single Judge in W.P. (C)No.5937 of 2026.