



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

THURSDAY, THE 26<sup>TH</sup> DAY OF FEBRUARY 2026 / 7TH PHALGUNA, 1947

WA NO. 1724 OF 2025

AGAINST THE JUDGMENT DATED 11.06.2025 IN WP(C) NO.9933 OF  
2024 OF HIGH COURT OF KERALA

APPELLANT(S)/PETITIONER:

- 1 PRAMEELA DEVI,  
AGED 57 YEARS  
W/O LATE C RADHAKRISHNAN NAIR, KRISHNANJALI,  
MATHOORMANA ROAD, THOTTAKKARA P O,  
OTTAPALAM, PALAKKAD, PIN - 679102
- 2 ANJALI RADHAKRISHNAN,  
AGED 26 YEARS  
D/O LATE C RADHAKRISHNAN NAIR, KRISHNANJALI,  
MATHOORMANA ROAD, THOTTAKKARA P O, OTTAPALAM,  
PALAKKAD, PIN - 679102
- 3 GEETHANJALI RADHAKRISHNAN,  
AGED 23 YEARS  
D/O LATE C RADHAKRISHNAN NAIR, KRISHNANJALI,  
MATHOORMANA ROAD, THOTTAKKARA P O, OTTAPALAM,  
PALAKKAD, PIN - 679102

BY ADV SHRI.U.BALAGANGADHARAN

RESPONDENT(S)/RESPONDENTS IN WP(C):

- 1 STATE BANK OF INDIA,  
REPRESENTED BY AUTHORIZED OFFICER, RASMEC,  
OPP. N S S K.P.T. HIGH SCHOOL, T.B. ROAD,  
OTTAPALAM, PALAKKAD, PIN - 679101
- 2 THE MANAGER, STATE BANK OF INDIA,  
P B BRANCH, OTTAPALAM,OPP. N S S K.P.T. HIGH SCHOOL,  
T.B. ROAD, OTTAPALAM, PALAKKAD, PIN - 679101



3 M/S. SBI LIFE INSURANCE COMPANY,  
NATARAJ M V ROAD, & WESTERN EXPRESS,  
HIGH WAY JUNCTION, ANDHERI EAST,  
MUMBAI, PIN - 400069

BY ADVS.  
SRI.AMAL GEORGE  
SMT.M.U.VIJAYALAKSHMI  
SRI.K.JAJU BABU (SR.)

OTHER PRESENT:

SRI. GEORGE THOMAS (MEVADA)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05.02.2026,  
THE COURT ON 26.02.2026 DELIVERED THE FOLLOWING:



## **JUDGMENT**

### **Muralee Krishna S., J.**

The petitioners in W.P.(C)No.9933 of 2024 filed this writ appeal under Section 5(i) of the Kerala High Court Act, 1958, challenging the judgment dated 11.06.2025 passed by the learned Single Judge in that writ petition.

2. The 1<sup>st</sup> appellant is the wife, and appellants 2 and 3 are the children of the deceased C.Radhakrishnan Nair, who availed a Housing Loan from the 1<sup>st</sup> respondent State Bank of India. As per the pleadings in the writ petition, the loan availed by Sri.C.Radhakrishnan Nair with Account No.HL37487083514 was for Rs.33,44,000/-. Ext.P1 is the arrangement letter dated 23.01.2018 issued by the Bank in respect of that loan. The Housing Loan availed by Sri.C.Radhakrishnan Nair was secured by the SBI Life Insurance Suraksha Loan Account bearing No.37487099568. Ext.P1 arrangement letter admits payment of insurance premium of Rs.1,59,000/-, and it shows the breakup of the loan amount and the insurance premium. Since C.Radhakrishnan Nair was working abroad, the documentation for the loan was done through his son Sri.Avinash Radhakrishnan, who did not join as a party to the writ petition, since he is not



available in India at present. At the time of availing the loan, Sri.Avinash Radhakrishnan was the power of attorney holder of C.Radhakrishnan Nair. According to the appellants, the EMI of Rs.48,737/- shown in Ext.P1 is inclusive of EMI for Suraksha Loan at the rate of Rs.827/- per month.

2.1. The appellants plead that C.Radhakrishnan Nair was paying the EMIs regularly at the rate of Rs.50,000/- instead of Rs.48,737/-. Due to serious illness, C.Radhakrishnan Nair defaulted the EMIs from September 2021 onwards, and he died on 05.01.2022 after a prolonged treatment. After the death of C.Radhakrishnan Nair, the appellants informed the Bank about the sad demise of C.Radhakrishnan Nair and requested to make available the benefit of Suraksha Insurance and close the loan transaction as per the terms of the insurance. But the 1<sup>st</sup> appellant received Ext.P4 communication dated 19.02.2022 from the 2<sup>nd</sup> respondent Manager stating that the deceased had not opted for insurance as he had not submitted an application for insurance to the Housing Loan Account No.HL37487083514, and the loan was sanctioned without insurance cover. To that communication, the appellants submitted Ext.P5 explanation dated 02.03.2022 specifying that an additional sum of Rs.1,59,000/- was sanctioned



along with the Housing Loan towards one-time insurance premium. Thereafter, the 1<sup>st</sup> respondent bank informed the appellants, vide Ext.P6 letter dated 14.03.2022, that the Bank has not accepted the Suraksha Loan.

2.2. It is the further case of the appellants that the 3<sup>rd</sup> respondent SBI Life Insurance Company, by Ext.P7 letter dated 18.08.2022, informed the appellants that the 3<sup>rd</sup> respondent is unable to locate the Home Loan Insurance in respect of the Home Loan availed by Sri.C.Radhakrishnan Nair. Thereafter, the appellants filed Ext.P8 complaint before the District Consumer Redressal Commission, Palakkad, on 28.12.2023, alleging deficiency of service and for appropriate directions to extend insurance cover to the Home Loan availed by C.Radhakrishnan Nair and also seeking compensation. However, the 2<sup>nd</sup> respondent issued Ext.P9 notice dated 17.01.2024 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short), calling upon the appellants to discharge the full liability of Rs.23,78,764/- as on 17.01.2024. To Ext.P9 notice, the appellants, through their counsel, sent Ext.P10 reply dated 01.02.2024. To Ext.P10 reply, the 3<sup>rd</sup> respondent issued Ext.P11



letter dated 13.02.2024 stating that the deceased had not opted for the Suraksha Life Insurance Coverage from the 3<sup>rd</sup> respondent. Contending that the reasoning in Ext.P11 letter dated 13.02.2024 are untenable and wrong and the presence of the deceased at the time of documentation was not requested and no communication to that effect was sent till his death, and such a reason is now put forward by the respondents only to cover up the mistake on their part from transferring premium amount of insurance to the 3<sup>rd</sup> respondent SBI Life Insurance Company, the appellants approached this Court with W.P(C)No.9933 of 2024, filed under Article 226 of the Constitution of India seeking the following reliefs:

- i. Call for the records leading to Ext.P9 and Ext.P11 and set aside the same by issuing writ in the nature of certiorari.
- ii. Writ in the nature of mandamus commanding the 2<sup>nd</sup> respondent to pay or waive remaining EMIs of the home loan covered by Ext.P1 and relieve the petitioners from the liability fully.
- iii. Writ in the nature of mandamus commanding 1<sup>st</sup> respondent to refrain from initiating further proceedings against the petitioners and their assets under SARFAESI Act with regard to the loan covered by Ext.P1 arrangement letter.
- iv. Declare that the petitioners are not liable to be proceeded



under SARFAESI Act pursuant to home loan sanctioned as per Ext.P1 and the entire home loan is secured by insurance policy for which one time premium is debited along with home loan account and recovered as part of EMI and further declare that the 2<sup>nd</sup> respondent Bank is fully responsible for any lapse in transferring one time premium to 3<sup>rd</sup> respondent.”

3. In the writ petition, respondents 1 and 2 filed a counter affidavit dated 07.08.2024, opposing the relief sought for.

Paragraphs 4 to 7 of that counter affidavit read thus:

“4. As per the Bank’s practice, during the documentation process the terms and conditions of the grant of the loan including the terms of the life insurance cover will be explained to the customer. As the Insurance coverage is optional, the applicable premium which is granted as a loan and the EMI thereon will also be advised. The fact that Home Loan Insurance Cover is optional is indicated in Clause 2(ii) of Ext. P1 Letter of Arrangement wherein it is stated Premium of Home Loan Insurance Cover (if requested) — Rs. 1,59,000.00. If this is acceptable, the borrower himself/herself will be asked to personally submit the Insurance Application in the standard form of the Insurance Company. Only after getting this application form duly signed by the borrower, premium will be paid to the Insurance Company. In this case, the loan documents were executed by Mr. Avinash Radhakrishnan, for and on behalf of Mr. Radhakrishnan, being his power of attorney holder. The Insurance Application with the health declaration has to



be signed only by the borrower i.e. late C. Radhakrishnan and as he was not personally present, this form was not submitted. Since late Radhakrishnan did not opt for the insurance cover by coming forward and submitting the Insurance application and health declaration, the premium was not paid to the Company Therefore, the Home Loan Insurance cover is not available for the housing loan availed by late Radhakrishnan. The averment that the deceased opted for Suraksha loan at the time of application expressly is factually incorrect. The averment that the presence of the deceased was not insisted by the 2<sup>nd</sup> respondent Bank is also false.

5. The amount of Rs.50,000 being paid by late Radhakrishnan was credited into the Housing Loan Account and no amount was paid into the Suraksha Loan account. The averment that the Bank while sanctioning the home loan, debited the premium amount from the sanctioned loan and it was being recovered as a part of EMI is incorrect. The averment that the Home loan is fully covered by SBI Life insurance policy Suraksha for which one time insurance premium has been paid is also incorrect. The averment that the Bank admits receipt of insurance premium in Ext. P1 and its repayment in EMI in Ext.P6 unambiguously is not correct at all. Meanwhile, late Radhakrishnan committed defaults in making repayment towards the Housing Loan account and passed away on 05.01.2022. Therefore, the respondent Bank was constrained to initiate measures under the SARFAESI Act against the petitioners, who are the legal heirs of late Radhakrishnan, for the recovery of the



outstanding dues. The averment that the initiation of SARFAESI action is a text book example of unfair and unethical practice of SBI is not true.

6. Regarding the averments in paras 6 to 10 of the writ petition, I respectfully submit as follows. Since the deceased borrower did not opt for the insurance cover, the entire remaining EMI liability of the home loan cannot be indemnified by the 3<sup>rd</sup> respondent and the averments to the contra are denied. By Ext.P4 communication dated 19.02.2022, the 2<sup>nd</sup> respondent intimated the 1<sup>st</sup> petitioner that the deceased borrower has not opted for insurance and that the housing loan was granted without the insurance cover. As stated supra, the installments of the housing loan paid @ Rs. 50,000/- per month by the borrower upto 08.09.2021 was credited to the housing loan account limit of Rs.33,44,000.00 and not to the Surakha loan insurance premium as evident from Ext. P2 statement of account. The borrower passed away on 05.01.2022 at that time three months instalments were in arrears. The 3<sup>rd</sup> petitioner vide Ext. P5 letter dated 02.03.2022 sent to the Chief General Manager, SBI, claimed that there is lapse on the part of the Bank in paying the insurance premium and sought for the settling the loan account. In response, the respondent Bank by Ext.P6 letter dated 14.03.2022 intimated the 3<sup>rd</sup> respondent that the deceased borrower did not opt for the insurance policy by submitting the requisite application/documents and that the housing loan was granted without insurance cover.

7. Regarding the averments in paras 11 to 14 of the writ



petition, I respectfully submit as follows. As stated supra, the respondent Bank was constrained to initiate SARFAESI measures by issuing Ext.P9 notice of demand dated 17.01.2024 U/s 13(2) to the petitioners for recovering the total outstanding dues of Rs.23,78,764. By Ext.P10 reply dated 01.02.2024 caused to be issued by the petitioners and Avinash Radhakrishnan, it was interalia claimed that the Bank has to recover amounts payable under the Suraksha Policy and adjust the proceeds thereof towards the balance amount payable under the home loan. By Ext.P11 reply dated 13.02.2024, the respondent Bank interalia informed the 1<sup>st</sup> petitioner that the home loan was not having insurance cover as the deceased borrower had failed to opt for the same. The averment that the power agent had requested for insurance coverage as instructed by his father and necessary premium amount was also added to loan amount and EMI was fixed including insurance element and they were being remitted by the deceased almost till his death is denied being baseless. As stated supra, the availing of the insurance cover for the home loan was optional and it was for the deceased borrower to opt for the same by personally submitting the Insurance application and submitting the health declaration. The averment that the reason now espoused is only a ruse on the part of the 1<sup>st</sup> respondent to cover up their mistake of transferring premium amount to SBI Life (3<sup>rd</sup> respondent) is incorrect. Therefore, the respondent Bank is constrained to proceed under SARFAESI Act for the recovery of the huge outstanding debt since the home loan is not having



insurance cover.”

4. On behalf of the 3<sup>rd</sup> respondent, a statement dated 13.08.2024 was filed in the writ petition, mainly contending that as per the office records of the 3<sup>rd</sup> respondent, there is no insurance cover under the loan account bearing No.37487083514.

5. After hearing both sides, the learned Single Judge by the impugned judgment dated 11.06.2025 closed the writ petition, holding that the remedy available to the appellants is before the Debt Recovery Tribunal under Section 17 of the SARFAESI Act. Being aggrieved, the appellants have filed the present writ appeal. Paragraph 2 and also the last paragraph of the said judgment read thus:

“2. The remedy of the petitioners, if aggrieved by any of the actions of the secured creditor taken under Section 13 of the Act, is to prefer an application before the Debts Recovery Tribunal under Section 17 of the Act. Without prejudice to the right of the petitioners to avail of the same and without prejudice to any of the contentions raised in this writ petition, this writ petition is closed. To enable the petitioners to avail of the same, all further coercive steps against the petitioners will stand deferred for one month. The writ petition is closed as above.”

6. In the writ appeal, respondents 1 and 2 have filed a statement dated 29.07.2025, producing therewith Annexure 1



document, which is the photocopy of the loan application for Housing Loan submitted by Sri. C. Radhakrishnan Nair. In view of the filing of the said statement, the appellants filed a reply affidavit dated 20.08.2025.

7. In the writ appeal, the appellants filed I.A.No.1 of 2025, seeking an order to direct the 2<sup>nd</sup> respondent to produce the ledger folio and other amount details of Suraksha Account No.37487099568 stated to have been opened by the borrower, namely Sri.C.Radhakrishnan Nair, along with Housing Loan Account No.37487083514 with the personal banking branch of State Bank of India at Ottappalam. On 18.09.2025, considering the pleadings and materials on record and also the submissions made at the Bar, we directed respondents 1 and 2 to produce before this Court the aforesaid ledger folio of the Suraksha Account as well as the housing loan account in the name of Sri.C.Radhakrishnan Nair with the 1<sup>st</sup> respondent Bank.

8. To the reply affidavit filed by the appellants, the respondents 1 and 2 filed a counter affidavit dated 02.09.2025, producing therewith Annexure R1(A), standing instructions given by Sri.C.Radhakrishnan Nair, through his power of attorney holder. On behalf of the 3<sup>rd</sup> respondent, a counter affidavit dated



16.09.2025, is filed in the writ appeal. The appellants again filed an additional reply affidavit dated 17.09.2025 in the writ appeal. Thereafter, respondents 1 and 2 also filed an additional counter affidavit dated 23.10.2025, producing therewith Annexures R1(B) to R1(D) documents.

9. Heard Sri.U.Balagangadharan, the learned counsel for the appellants, Sri.George Thomas (Mevada), the learned Senior Counsel for respondents 1 and 2 and Smt.M.U.Vijayalakshmi, the learned Standing Counsel for the 3<sup>rd</sup> respondent SBI Life Insurance Company.

10. The learned counsel for the appellants would submit that in Ext.P1 arrangement letter, the total loan sanctioned to Sri.C.Radhakrishnan Nair was Rs.35,03,000/-, which is inclusive of Home Loan of Rs.33,44,000/- and Home Loan Insurance Cover premium of Rs.1,59,000/-. In Page No.4 of Ext.P1 arrangement letter, the loan applicant had struck off the word "do not wish to avail" and retained the word "wish to avail" loan for funding of the premium of Home Loan Insurance Cover. Ext.P2 statement of account shows that an amount of Rs.33,44,000/- was the Housing Loan amount. Annexure R1(D) Suraksha Loan Account No.37487099568 maintained by the 1<sup>st</sup> respondent Bank shows



that an amount of Rs.1,59,000/- was credited to that account on 30.01.2018, and it was cancelled by the Bank on 30.07.2022, after the death of Sri. C.Radhakrishnan Nair. From Ext.P1 arrangement letter, it is clear that the EMI of Rs.48,737/- fixed to be paid by the borrower is inclusive of the EMI of the Suraksha Loan Account. The borrower had actually paid Rs.50,000/- per month as EMI, and the Bank received the same. The laches is on the part of the 1<sup>st</sup> respondent Bank in transmitting the amount towards the insurance premium to the 3<sup>rd</sup> respondent Insurance Company. It was to escape from that inaction on the part of respondents 1 and 2, they are now taking a stand that the borrower had not availed the benefit of the insurance offered through Ext.P1 arrangement letter. The learned counsel relied on the judgment of the Apex Court in **D. Srinivas v. SBI Life Insurance Company Limited [(2018) 3 SCC 653]** in support of his argument that when insurance premium was accepted by waiving the condition of the medical examination, the insurance company later cannot contend that the policy is not acceptable for the reason of nonconducting of the medical examination of the insured.

11. The learned Senior Counsel for the respondents 1 and 2 would submit that, in fact, the Borrower, sri.C.Radhakrishnan



Nair, had not struck off the options, i.e., "wish to avail" or "do not wish to avail" the Funding of Premium of Home Loan Insurance Cover in Ext.P1 arrangement letter. Annexure R1(C) is a copy of Ext.P1 produced by the appellants before the District Consumer Dispute Redressal Forum, wherein the appellants have struck off the word "do not wish to avail" which is evident from a comparison of Ext.P1 and Annexure R1(C). It is a clear manipulation committed by the appellants to make it believe that the Borrower, Sri.C.Radhakrishnan Nair, had opted for Home Loan Insurance Cover. The learned Senior counsel pointed out that as per Clause 17 of Ext.P1, the sanction of the loan will be valid for three months from the date of the letter, and if no amount is disbursed during the validity period, the loan applicant has to seek fresh sanction. In Ext.P1, the borrower has not requested Home Loan Insurance Cover, and he did not submit any separate application for the same. The learned Senior Counsel pointed out that in Annexure 1 loan application, the borrower has specifically marked "No" for the question "Do you wish to be covered by Home Loan Insurance Life Cover eg:SBI Life?". Annexure R1(A) standing instructions given by the Borrower through his power of attorney holder would show that the standing instructions given are Housing Loan specific, and



it does not cover insurance premium. The learned counsel pointed out that in Ext.P2 statement of account, the EMI paid by the borrower was adjusted towards the loan amount of Rs.33,44,000/- and not towards the insurance premium. As far as Annexure R1(D) Suraksha Loan Account opened in the name of the deceased is concerned, the learned Senior Counsel submitted that it was as a part of routine; such an account was opened. However, no amount was credited to that account.

12. The learned counsel for the 3<sup>rd</sup> respondent Insurance Company would submit that no amount is received in the Insurance Company towards the insurance premium of the Housing Loan availed by the deceased C.Radhakrishanan Nair. In order to give insurance coverage, the 3<sup>rd</sup> respondent should get an application signed by the insured, and the appellants have no case that they handed over any such insurance application to the respondents. As per the case of the appellants themselves, the loan application was signed by the power of attorney holder of the borrower, which is insufficient for availing an insurance coverage, since medical examination of the Borrower and other formalities have to be complied with to grant the insurance coverage for the loan.



13. The appellants approached this Court with the writ petition when they received Ext.P9 notice under Section 13(2) of the SARFAESI Act from the 1<sup>st</sup> respondent Bank. In this impugned judgment, the learned Single Judge held that since the appellants are challenging the proceedings initiated by the Bank under the provisions of the SARFAESI Act, the remedy available to the appellants is under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal. But, the appellants contend that in the writ petition, the notice under Section 13(2) of the SARFAESI Act alone is not under challenge. The appellants have other serious contentions, such as the Bank has not transferred the premium amount sanctioned to the Borrower towards insurance coverage under the Suraksha Loan account to the Insurance Company. Therefore, the dispute pertains to the Bank's negligence and breach of contract in handling the insurance premium, and therefore, a writ petition under Article 226 of the Constitution of India is maintainable.

14. As per Section 17 of the SARFAESI Act, any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorized officer may make an application to the Debts



Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken. In the instant case, as noticed above, Ext.P9 notice under challenge in the writ petition is one issued under Section 13(2) of the SARFAESI Act. The Bank is yet to initiate the measures provided under Section 13(4) of the SARFAESI Act. Therefore, at present, the appellants cannot invoke the jurisdiction of the Debts Recovery Tribunal under Section 17 of the SARFAESI Act against Ext.P9 notice. Moreover, as noticed above, the appellants are challenging Ext.P9 notice and Ext.P11 communication on the ground that the Bank failed to transfer the money to the 3<sup>rd</sup> respondent insurance company, towards the insurance premium sanctioned as per Ext.P1 arrangement letter in respect of which Annexure R1(D) account was opened by the Bank, and therefore the action on the part of the Bank to convert the account of the predecessor of the appellants as NPA and issuance of notice under Section 13(2) of the SARFAESI Act as illegal. In such circumstances, we are of the view that the writ petition under Article 226 of the Constitution of India is maintainable before this Court, since the stage of challenge against the action of the Bank before the Debt Recovery Tribunal is yet to be reached.



15. On the basis of the rival contentions raised by the parties, the issue to be decided in this writ appeal is whether the original borrower, namely, Sri.C.Radhakrishnan Nair, availed the benefit of Housing Loan Insurance Cover as contended by the appellants?

16. In Ext.P1 arrangement letter, it is stated that the Bank has decided to sanction a Home Loan limit of Rs.35,03,000/- with the breakup of Rs.33,44,000/- towards the Home Loan and Rs.1,59,000/- towards the Funding of Housing Loan Insurance Cover (if requested). In Clause 2 of Ext.P1, under the head Purpose it is stated that "(ii) Premium for Home Loan Insurance Cover (if requested)- Rs.1,59,000/-". Clause 17 of Ext.P1 says that the sanction of the loan will be valid for three months from the date of that letter. That means if any of the sanctioned amounts were not accepted within three months, the same will lapse. In the fourth page of Ext.P1, two options are stated, i.e., "I/We wish to avail/do not wish to avail" Loan for Funding of Premium of Home Loan Insurance Cover. However, Ext.P1 shows that neither of these Clauses was struck off by either the insurer or the insured. Annexure R1(C) is a copy of Ext.P1 produced by the appellants before the District Consumer Dispute Redressal



Forum. But surprisingly, in Annexure R1(C), the words "do not wish to avail" are seen struck off. According to the respondents, this was done purposefully by the appellants while producing a copy of Ext.P1 to the District Consumer Redressal Forum.

17. It is pertinent to note that Ext.P2 is the statement of account of the loan account. From the perusal of Ext.P2, it can be seen that the amount paid by the borrower at the rate of Rs.50,000/- per month was credited towards the loan amount of Rs.33,44,000/-. If the contention of the appellants is accepted, the sum of Rs.1,59,000/- to be paid by the borrower towards the insurance premium should also have been deducted every month either from a separate account or by including that amount in Ext.P2 account. But Annexure R1(D), the details of the Suraksha Loan Account produced by the Bank would show that there is no transaction, except an entry shown as "DR" dated 30.01.2018 of a sum of Rs.1,59,000/- and cancellation of the said amount on 30.07.2022. Admittedly, the premium amount of Rs.1,59,000/- is not transferred to the 3<sup>rd</sup> respondent insurer.

18. The appellants state that the non transferring of the insurance premium to the 3<sup>rd</sup> respondent is an omission on the part of the Bank. But to accept the aforesaid contention of the



appellants, it is to be proved that the predecessor of the appellants, i.e., Sri.C.Radhakrishnan Nair, has submitted an insurance application to the 3<sup>rd</sup> respondent. But in the instant case, it is not in dispute that the loan documents were signed by the authorised signatory/power of attorney holder of Sri.C.Radhakrishnan Nair, since Sri.C.Radhakrishnan Nair was not available in India. It is also not in dispute that the medical examination of Sri.C.Radhakrishnan Nair was not carried out, which, according to the 3<sup>rd</sup> respondent, is mandatory for granting the insurance coverage. Apart from that, as noted above, from Ext.P2 account statement, it is evident that the sum of Rs.1,59,000/-, which, according to the appellants, was sanctioned to Sri.C.Radhakrishnan Nair, was not credited to the loan account. No amount was paid towards the aforesaid sum of Rs.1,59,000/- either in Ext.P2 loan account or in Annexure R1(D) Suraksha account.

19. In **D. Srinivas [2018 (3) SCC 653]**, the Apex Court held that when the insurer accepted the premium without conducting a medical examination of the insured, it had waived the condition precedent of the medical examination. But to the present case, the said dictum is not applicable, since no amount



is admittedly credited to the account of the 3<sup>rd</sup> respondent insurer towards the premium of the insurance offered to the borrower by Ext.P1 arrangement letter.

20. It is also worth to note that in Annexure R1(A), standing instructions given by the deceased borrower through his power of attorney holder, the instruction was only pertaining to the payment of monthly instalments of the loan account and not pertaining to the Suraksha Account. All the aforesaid facts lead to an irresistible conclusion that the borrower Sri.C.Radhakrishnan Nair had not availed the benefit of insurance coverage, and he had not paid any amount as insurance premium. Though through Ext.P1 arrangement letter, the insurance premium is also offered to the borrower the same was not sanctioned since he had not availed that benefit. In such circumstances, we find no merit in the contention of the appellants that the loan availed by the deceased Sri.C.Radhakrishnan Nair, the predecessor of the appellants, is secured by the Insurance under the 3<sup>rd</sup> respondent. Therefore, the writ petition ought to have been dismissed on that ground by the learned Single Judge.

In the result, this writ appeal is disposed of by setting aside the impugned judgment dated 11.06.2025, passed by the learned



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Single Judge in W.P.(C)No.9933 of 2024, and the writ petition stands dismissed.

Sd/-

**ANIL K. NARENDRAN, JUDGE**

Sd/-

**MURALEE KRISHNA S., JUDGE**

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APPENDIX OF WA NO. 1724 OF 2025

RESPONDENT ANNEXURES

- Annexure 1 True photocopy of the loan application for housing loan submitted by late C. Radhakrishnan Nair
- Annexure R1(A) True photocopy of the standing instruction given by the deceased borrower through his Power of Attorney Holder .
- Annexure R1(B) True photocopy of the order dated 24/01/2025 passed by the Honble Consumer Disputes Redressal Commission Palakkad
- Annexure R1(C) True photocopy of the relevant page of the certified copy of the arrangement letter dated 23/01/2018 marked as Ext. A1 in CC 229 of 2022 Consumer Disputes Redressal Commission Palakkad
- Annexure R1(D) True photocopy of the loans transaction enquiry pertaining to Suraksha Loan Account No. 37487099568