2026:KER:17644

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

MONDAY, THE 2ND DAY OF MARCH 2026 / 11TH PHALGUNA, 1947

WA NO. 353 OF 2026

AGAINST THE JUDGMENT DATED 19.01.2026 IN OP (DRT) NO.30 OF 2026 OF HIGH COURT OF KERALA

APPELLANT/1ST RESPONDENT:

UNION BANK OF INDIA,REPRESENTED BY BRANCH MANAGER, KAKKANAD BRANCH, (ERSTWHILE ANDRA BANK), ELLIKKAL BUILDING, PAREKKATTU TEMPLE ROAD, CHEMBUMUKKU, KAKKANAD, ERNAKULAM, PIN - 682021

BY ADVS.
SHRI.ASP.KURUP
SRI.SADCHITH.P.KURUP
SHRI.SIVA SURESH
SMT.ATHIRA VIJAYAN
SMT.B.SREEDEVI
SHRI.VYSHNAV S. NAIR
SMT.AKSHARA RAVI

RESPONDENTS/PETITIONER & RESPONDENTS 2 & 3:

1 **M/S. S. S. GLASS WORLD, 31/1819-A, MAY 1ST ROAD, NEAR DD RETREAT, THAMMANAM P.O., ERNAKULAM, REPRESENTED BY ITS PARTNER, LIZY SEBASTIAN, W/O. C.R. SEBASTIAN, RESIDING AT CHAMMANIKODATH HOUSE, ST. VINCENT CONVENT ROAD, PALARIVATTOM, ERNAKULAM-682025, PIN - 682032**

2 **C.R. SEBASTIAN,S/O. C.V. RAPHEAL, CHAMMANY KODOTH HOUSE, PALARIVATTOM P.O., KOCHI, PIN - 682025**

3 K.R. SHAJAN JOSEPH,
S/O. LATE K.L. RAPHEL, KOMAROTH HOUSE, AZAD ROAD,
KALOOR, ERNAKULAM, PIN – 682017

SRI.JOHN PRAKASH – R1

THIS WRIT APPEAL WAS FINALLY HEARD ON 11.02.2026, THE COURT ON 2.3.2026 PASSED THE FOLLOWING:

2026:KER:17644

JUDGMENT

Muralee Krishna, J.

The 1st respondent in O.P.(DRT) No.30 of 2026 filed this writ appeal under Section 5(i) of the Kerala High Court Act, 1958, challenging the judgment dated 19.01.2026 passed by the learned Single Judge in that original petition.

2. The 1st respondent herein filed O.P.(DRT)No.30 of 2026 under Article 227 of the Constitution of India seeking the following reliefs:

> "i. Call for records leading to Exts.P5 and P6 in S.A.No. 307 of 2025 pending before the Hon'ble Debts Recovery Tribunal-I at Ernakulam, and direct the tribunal to dispose of the same at the earliest.
>
> ii. Stay the operation and implementation of Ext.P7 till disposal of Exts.P5 and P6 by the Hon'ble Debts Recovery Tribunal-I at Ernakulam".

3. Going by the averments in the original petition, the 1st respondent herein is the applicant in S.A. No. 307 of 2025 pending before the Debts Recovery Tribunal-I at Ernakulam (the 'Tribunal' for short). The 1st respondent is a tenant in the secured asset of the appellant by virtue of a lease agreement with respondents 2 and 3. The 1st respondent had been operating in the said premises

since 2000. The physical possession of the secured asset was taken over by the appellant. At the time of taking physical possession, stock worth Rs.3,46,95,850/- (Rupees Three Crore Forty-Six Lakh Ninety-Five Thousand Eight Hundred Fifty only) of the 1st respondent was lying in the secured asset. The appellant Bank has clearly failed to acknowledge the stock as belonging to the 1st respondent, but is proceeding as if the same belonged to the borrower of the appellant. In fact, one of the partners of the 1st respondent happened to be the guarantor of the borrower who had mortgaged the secured asset with the appellant. Merely by virtue of such a connection, the appellant Bank has proceeded against the properties of the 1st respondent. In fact, the borrower in the SA challenging the measures under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short), viz S. A. No.407 of 2021, had clearly contended that the properties in the secured asset belong to the tenant. Despite such admissions, the appellant Bank has initiated measures to conduct a public auction of the movable assets of the 1st respondent worth Rs.3,46,95,850/- (Rupees Three Crore Forty-Six Lakh Ninety-Five Thousand Eight

Hundred Fifty only) for a paltry sum of Rs.8,24,000/- (Rupees Eight Lakh Twenty-Four Thousand only). Though the 1st respondent, immediately upon receiving information regarding the sale, had challenged the same, the tribunal has posted the case for hearing on the date of sale, paving the way for unnecessary creation of 3rd party interest, apart from causing grave prejudice to the 1st respondent. Hence, the 1st respondent filed the OP(DRT).

4. In the OP(DRT), the appellant filed a counter affidavit dated 19.01.2026, producing therewith Exts.R1A and R1B documents. After hearing both sides, the learned Single Judge passed the impugned judgment. Paragraphs 2 to 5 of that judgment read thus:

> "2. This Court notice that Ext.P7 advertisement for the sale of the movable assets has been made only on 03.01.2026, and that the petitioner moved to the Debt Recovery Tribunal (for short, D.R.T) on 12.01.2026. The D.R.T has not taken up the matter, is the grievance of the petitioner. It is the submission of the learned counsel for the petitioner that the matter was specially mentioned orally before the D.R.T on 16.01.2026, which is averred in paragraph No.4 of the Original Petition.
>
> 3. Nevertheless, the matter stands posted to tomorrow

(20.01.2026), that is to say, the date on which, the auction sale is scheduled in terms of Ext.P7 advertisement.

4. This Court notice that, if the sale takes place as scheduled tomorrow, the subject matter of the S.A will become infructuous.

5. In the circumstance, the sale contemplated vide Ext.P7 shall stand deferred for a period of two weeks. There will be further direction to the D.R.T-I, Ernakulam to consider and pass orders in Ext.P6 application for stay, after affording an opportunity of being heard to the petitioner, as also, the respondent. This O.P(DRT) is allowed, as indicated above."

5. When the aggrieved 1st respondent in the O.P.(DRT) filed this writ appeal, the Registry has refused to number the writ appeal doubting the maintainability of the appeal against a judgment in an O.P.(DRT) filed under Article 227 of the Constitution of India. By the order dated 03.02.2026, we found that the impugned judgment passed by the learned Single Judge preventing the appellant from taking further steps for a period of two weeks in pursuance of Ext.P7 sale notice can only be treated as one passed under Article 226 of the Constitution of India and therefore, the present writ appeal is maintainable against the impugned judgment. Accordingly, the Registry was directed to number the writ appeal and list the same for admission.

6. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent. Considering the nature of the dispute, issuance of notice to respondents 2 and 3 is dispensed.

7. The learned counsel for the appellant would argue that respondents 2 and 3 had previously approached the Tribunal by filing S.A.No.204 of 2021, wherein by Ext.P1 order dated 20.02.2025, the Tribunal found that the 1st respondent M/s.S.S. Glass World is not a tenant. Now the 1st respondent again approached the Tribunal as well as this Court, raising the very same contention, which was already found as incorrect in Ext.P1 order. By pointing out Ext.P2 written statement filed by the appellant-1st defendant in S.A.No.307 of 2025, the learned counsel submitted that the wife and children of the 2nd respondent - 1st applicant in S.A.No.204 of 2021 are the partners of the 1st respondent M/s.S.S. Glass World. The learned counsel vehemently submitted that the learned Single Judge ought not have stalled the recovery proceedings initiated by the Bank by interfering with Ext.P7 sale notice, which is completely falling within the domain of the Tribunal, wherein the Securitisation Application is pending.

8. On the other hand, the learned counsel for the 1st respondent would submit that the 1st respondent was not a party to S.A.No.204 of 2021. By relying on the judgments of the Apex Court in **Industrial C. and I. Corporation v. Grapco Industries [(1999) 4 SCC 710]** and **Bihar Industrial Area Development Authority v. M/s. Scope Sales Private Ltd. [2026 KHC Online 6072]**, the learned counsel argued that the direction given by the learned Single Judge is within the limits entitled, while considering a matter under Article 227 of the Constitution of India. Moreover, the learned counsel pointed out that the learned Single Judge deferred the sale contemplated in Ext.P7 notice only for a period of two weeks, and the said period is already over. Now the Tribunal has heard Ext.P6 interlocutory application in detail, and an order will be passed in the near future.

9. The limited prayer in the O.P.(DRT) made by the 1st respondent-petitioner was to direct the Tribunal to dispose of Ext.P6 interlocutory application filed by the 1st respondent in the Securitisation Application for stay of further proceedings pursuant to Ext.P7 sale notice dated 03.01.2026 fixing the auction of the movable assets of the 1st respondent on 20.01.2026.

Consequentially the 1st respondent has also sought a stay of the operation and implementation of Ext.P7, till the disposal of Ext.P5 amendment application and Ext.P6 stay application filed by the 1st respondent in the Securitisation Application pending before the Tribunal.

10. In **Grapco Industries [(1999) 4 SCC 710]**, while considering the question, if the Debts Recovery Tribunal constituted under Section 3(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 has jurisdiction to grant ad interim ex parte order of injunction or stay against the defendants on an application filed by the bank or the financial institutions for recovery of the debt as defined under Clause (g) of Section 2 of the said Act, the Apex Court held thus:

> "14. High Court also said that on merits as well the Tribunal was wrong in granting an ex parte order. It is not that High Court itself considered the merits of the case. Objection of the High Court was twofold: (1) the Tribunal did not give any reasons and (2) it was an omnibus order and that there was no reference even to prayers in the application and that the prayers stood allowed "in terms of entire hog". Criticism of the High Court appears to be correct on that account. Judgment of the High Court, however, does not refer at all to the facts of the case and it proceeds more on abstract

principles of law. There was no bar on the High Court to itself examine the merits of the case in the exercise of its jurisdiction under Article 227 of the Constitution if the circumstances so require. There is no doubt that High Court can even interfere with interim orders of the courts and tribunals under Article 227 of the Constitution if the order is made without jurisdiction. But then a too technical approach is to be avoided. When facts of the case brought before the High Court are such that High Court can itself correct the error, then it should pass appropriate orders instead of merely setting aside the impugned order of the Tribunal and leaving everything in vacuum".

(Underline supplied)

11. In **M/s. Scope Sales Private Ltd. [2026 KHC Online 6072]**, the Apex Court, while considering the issue whether the Division Bench of the High Court was right in its interference with the order of dismissal of the writ petition passed by the learned Single Judge, held thus:

"13. We must also bear in mind the nature and extent of jurisdiction that an intra-court appellate Bench of a high court exercise. Such appellate jurisdiction is conferred either under the Letters Patent or by the relevant statutory provisions. It is pertinent to note that both - Single Bench and Division Bench - exercise the same jurisdiction under Article 226 of the Constitution. In our view, the exercise of intra-court appellate jurisdiction is warranted only where

> the judgment or order under challenge is demonstrably erroneous or suffers from perversity. Such jurisdiction ought not to be invoked merely because another view is possible on the same set of facts, particularly where the view adopted by the Single Judge is a plausible and reasonable one. In other words, an intra-court appellate Bench ought not to substitute its own view, merely because such Bench considers its view to be better than the one taken by the Single Bench; so long as the view taken by the Single Bench is a plausible one, interference should stay at a distance. (Underline Supplied)

12. While coming to the question of jurisdiction of the High Court to interfere in the recovery proceedings initiated by the Banks in SARFAESI proceedings is concerned, in **Authorized Officer, State Bank of Travancore and Another v. Mathew K.C. [2018 (1) KHC 786]**, the Apex Court held that the High Court under Article 226 of the Constitution of India can entertain a writ petition only under exceptional circumstances and that it is a self-imposed restraint by the High Court. The four exceptional circumstances such as, where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are

repealed, or when an order has been passed in total violation of the principles of natural justice, were re iterated in paragraph 6 of the said judgment by relying on the judgment of the Apex Court in **Commissioner of Income Tax and Others v. Chhabil Dass Agarwal [(2014) 1 SCC 603]**.

13. This position was reiterated by the Apex Court in **South Indian Bank Ltd. (M/s.) v. Naveen Mathew Philip [2023 (4) KLT 29]** and after discussing the various judgments on the point as well as the circumstances in which the High Court can interfere with in matters pertaining to the SARFAESI Act, held as under:

> "Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Art.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. In our view, 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 remedy under Art.226 of the Constitution, a person must exhaust the remedies available under the relevant statute"

14. In **PHR Invent Educational Society v. UCO Bank [2024 (3) KHC SN 3]** the Apex Court held that it is more than a settled legal position of law that in matters arising out of RDB Act and SARFAESI Act, the High Court should not entertain a petition under Art.226 of the Constitution, particularly when an alternative statutory remedy is available.

15. From the judgments referred to supra, it is clear that unless the four exceptional circumstances mentioned by the Apex Court in **Mathew K.C. [2018 (1) KHC 786]**, the 1st respondent cannot invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India, against the proceedings initiated by the Bank under the provisions of the SARFAESI Act. It is clear from the reading of Section 17 of the SARFAESI Act that any person claiming a right on the secured asset can move the Debts Recovery Tribunal if aggrieved by the proceedings initiated against that property by the secured creditor under the provisions of the

SARFAESI Act.

16. But, while going through the pleadings in the present O.P.(DRT), we notice that it is filed by the 1st respondent with a grievance that the Tribunal is not disposing of the stay petition filed by it and the 1st respondent sought the indulgence of this Court only to the limited extent of directing the Tribunal to dispose of the same at the earliest, by invoking the supervisory jurisdiction under Article 227 of the Constitution of India. From the impugned judgment, it is clear that the learned Single Judge did not enter into any finding on merits regarding the matter pending before the Tribunal as S.A.No.307 of 2025 filed by the 1st respondent herein. However, noting that the auction sale is scheduled to 20.01.2026 as per Ext.P7 sale notice and if the sale takes place as scheduled, the subject matter of the Securitisation Application become infructuous, the learned Single Judge made indulgence to a limited extent of deferring the said sale for a period of two weeks, so as to preserve the subject matter for a brief period in order to enable the Tribunal to consider and pass orders in Ext.P6 stay application filed in the Securitisation Application by the 1st respondent, on merits. As noticed hereinabove, the period of the

above stay granted by the learned Single Judge is already over. Though the learned counsel for the appellant vehemently submitted that in view of the stay granted by the learned Single Judge, though for a limited period of two weeks, the Tribunal may grant stay of recovery proceedings in the Securitisation Application, we do not think so, especially for the reason that the learned Single Judge did not make any observations in the impugned judgment, so as to persuade the Tribunal to stay the further proceedings against the secured asset. Nothing has been stated by the learned Single Judge in the impugned judgment regarding the merits of the matter. In view of the principles laid down in the judgments of the Apex Court in **Grapco Industries [(1999) 4 SCC 710]** and **M/s. Scope Sales Private Ltd. [2026 KHC Online 6072]**, the stay for a limited period of two weeks granted by the learned Single Judge with a view to preserving the subject matter cannot be said to exceed the jurisdiction under Article 227 of the Constitution of India.

Having considered the pleadings and materials on record and the submissions made at the Bar, we find no ground to hold that the impugned judgment is perverse or patently illegal, which

warrants interference in this intra-court appeal.

In the result, the writ appeal stands dismissed.

Sd/-
ANIL K.NARENDRAN, JUDGE

Sd/-

sks **MURALEE KRISHNA S., JUDGE**