



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 4TH DAY OF MARCH 2026 / 13TH PHALGUNA, 1947

ICR (WP(C)) NO. 31 OF 2025

PETITIONER/S:

- 1 M/S. GRIDS ENGINEERS AND CONTRACTORS,
MMC/IX/456/A7, ATHIRA COMPLEX, MUDAVOOR P.O.,
MUVATTUPUZHA, ERNAKULAM, REPRESENTED BY ITS MANAGING
PARTNER SHINE V. RAJ. PIN-686669**

- 2 SHINE V. RAJ
AGED 46 YEARS
S/O. V.A. RAJAN, MANAGING PARTNER, M/S. GRIDS ENGINEERS
AND CONTRACTORS, MMC/IX/456/A7, ATHIRA COMPLEX, MUDAVOOR
P.O., MUVATTUPUZHA, ERNAKULAM RESIDING AT
VARAMBATHUKUDIYIL HOUSE, VELLOORKUNNAM P.O., MUDAVOOR,
MUVATTUPUZHA, ERNAKULAM, PIN-686669**

**BY ADVS.
SHRI.E.B.THAJUDDEEN
SHRI.ARTHUR B. GEORGE
SRI.P.A.MOHAMMED ASLAM
SHRI.RAMSHAD K.R.
SHRI.MUHAMMED RISWAN K.A.
SHRI.MIDHUN MOHAN
SHRI.FIDIL V. JOHN
SRI.KIRAN NARAYANAN
SRI.P.SANJAY**

RESPONDENT/S:

- 1 UNION BANK OF INDIA,
REGIONAL OFFICE KOTTAYAM, 3RD FLOOR, AMALA TOWERS,**



**ADICHIRA JUNCTION, KOTTAYAM, REPRESENTED BY ITS CHIEF
MANAGER AND AUTHORIZED OFFICER, PIN-686630**

- 2 THE BRANCH MANAGER
UNION BANK OF INDIA (E-ANDHRA BANK) , THODUPUZHA BRANCH,
1ST FLOOR, VELLARINGAT TOWERS, BY PASS JUNCTION,
THODUPUZHA, IDUKKI DISTRICT, PIN-685584**

**BY ADVS.
SHRI.ASP.KURUP
SRI.SADCHITH.P.KURUP
SRI.C.P.ANIL RAJ
SHRI.SIVA SURESH
SMT.B.SREEDEVI
SMT.ATHIRA VIJAYAN
SRI. RAJA KANNAN, AMICUS CURIAE**

**THIS INTRA COURT REFERENCE (WRIT PETITION (CIVIL)) HAVING BEEN
FINALLY HEARD ON 26.02.2026, ALONG WITH WA.2362/2025, THE COURT ON
04.03.2026 DELIVERED THE FOLLOWING:**



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 4TH DAY OF MARCH 2026 / 13TH PHALGUNA, 1947

WA NO. 2362 OF 2025

**AGAINST THE ORDER DATED IN WP(C) NO.26067 OF 2025 OF HIGH
COURT OF KERALA**

APPELLANT/S:

- 1 UNION BANK OF INDIA,
REGIONAL OFFICE KOTTAYAM, 3RD FLOOR, AMALA TOWERS,
ADICHIRA JUNCTION, KOTTAYAM, REPRESENTED BY ITS CHIEF
MANAGER AND AUTHORIZED OFFICER, PIN - 686630**

- 2 THE BRANCH MANAGER,
UNION BANK OF INDIA (E-ANDHRA BANK) , THODUPUZHA BRANCH,
1ST FLOOR, VELLARINGAT TOWERS, BY PASS JUNCTION,
THODUPUZHA, IDUKKI DISTRICT, PIN - 685584**

**BY ADVS.
SHRI.ASP.KURUP
SRI.SADCHITH.P.KURUP
SHRI.SIVA SURESH
SMT.B.SREEDEVI
SMT.ATHIRA VIJAYAN**

RESPONDENT/S:

- 1 M/S. GRIDS ENGINEERS AND CONTRACTORS,
MMC/IX/456/A7, ATHIRA COMPLEX, MUDAVOOR P.O.,
MUVATTUPUZHA, ERNAKULAM, REPRESENTED BY ITS MANAGING
PARTNER SHINE V. RAJ., PIN - 686669**



**2 SHINE V. RAJ,
AGED 46 YEARS
S/O. V.A. RAJAN, MANAGING PARTNER, M/S. GRIDS ENGINEERS
AND CONTRACTORS, MMC/IX/456/A7, ATHIRA COMPLEX, MUDAVOOR
P.O., MUVATTUPUZHA, ERNAKULAM RESIDING AT
VARAMBATHUKUDIYIL HOUSE, VELLOORKUNNAM P.O., MUDAVOOR,
MUVATTUPUZHA, ERNAKULAM, PIN - 686669**

**BY ADVS.
SRI. E.B.THAJUDEEN
SRI.P.SANJAY
SRI. RAJA KANNAN, AMICUS CURIAE**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 26.02.2026, ALONG
WITH ICR (WP(C)).31/2025, THE COURT ON 04.03.2026, DELIVERED THE
FOLLOWING:**



JUDGMENT

Dated this the 4th day of March, 2026

Soumen Sen, C.J.

The order of reference is arising out of a writ petition filed by M/s. GRIDS Engineering and Contractors and another, *inter alia*, challenging the notice issued by the Bank under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The writ appeal has been preferred against the order of reference.

2. The writ appeal, the reference and the writ petition were initially heard on 16 February 2026 when Mr. Joseph Jose, learned counsel representing Mr. E.B. Thajuddeen, learned counsel for the Petitioners in ICR [W.P(C)] No.31 of 2025, Mr. Raja Kannan, learned *Amicus Curiae* and Mr. Siva Suresh, learned Standing Counsel for the Bank, made their respective submissions.

3. Before we commenced hearing of the matters on 16 February 2026, the learned counsel for the petitioners and the



Bank have jointly submitted that during the pendency of the proceedings, the parties have arrived at a settlement. The learned counsel for the Bank has submitted that the loan account has already been closed.

4. On the basis of the said submission made on that date, we could have dropped the reference and the writ appeal by recording the said submission. However, we felt it necessary to give our views with regard to the merits of the order of reference, as the appeal arising from the order of reference has now become infructuous, in view of the settlement arrived at between the parties. However, after the hearing was concluded and the draft judgment was prepared, it appeared that the *Amicus Curiae* appointed by the order dated 10 November 2025 did not file his law notes and it was felt necessary to consider his views. In view thereof, a fresh order was passed on 19 February 2026 which reads as follows:

“ORDER

These matters were listed on 16.02.2026. However, it appears that Mr. Raja Kannan, learned Amicus Curiae has not filed any law notes on the



issue involved in the reference. Although we dictated an order on that day, upon finalising the draft, we felt that the views of the Amicus Curiae are required.

2. Hence, the matters shall not be shown as disposed of on 16.02.2026 and shall instead be listed on 26.02.2026 for further hearing. All the parties are directed to file their law notes in the meanwhile.”

5. When all the matters came up on 26 February 2026, a different set of advocates appeared and it was submitted that the settlement was obtained by coercion and an application has been filed today for amendment of the writ petition, but, due to defect, the said application was not listed. Although we expressed our displeasure, we passed the following order:

“ORDER

Mr. P. Sanjay, the learned counsel appears and submits that he has been instructed to represent the writ petitioner in these proceedings and that he has been newly engaged after the matter was last heard by this Bench. It is submitted that one interlocutory application has been filed along with the Vakalatnama seeking amendment of the writ petition.



2. *However, we definitely recollect that the hearing of the writ petition was also concluded on the earlier occasion on the basis of the submissions made by the learned counsel for the writ petitioner as well as the Bank that a settlement had been arrived at between the parties and the writ petitioner had paid the entire amount. Upon receipt of the said amount, the Bank closed the loan account. The learned counsel for the Bank has, in fact, filed documents showing the closure of the loan account and as such, this writ petition has become infructuous.*

3. *The learned counsel for the writ petitioner, however, submits that he was not aware of such submissions being made on behalf of the writ petitioner. We feel that the writ petitioner ought to have disclosed such facts to his advocate to save him from any embarrassment in these proceedings. In fact, for all practical purposes, hearing was concluded and an order was prepared; however, it could not be pronounced as it appeared that the Amicus Curiae did not file written notes of submissions. The matters were listed on 19 February 2026 only for the purpose of considering the submission of the learned Amicus with regard to the reference and not for rehearing of the writ petition or the appeal.*

4. *The learned counsel for the Bank, on the earlier occasions and even today, has conceded that the writ appeal is not maintainable as it*



arises out of an order of reference. The Amicus Curiae has also expressed the same opinion while explaining his stand with regard to Section 5 of the Kerala High Court Act.

5. In view of the fact that the interlocutory application has been filed seeking amendment of the writ petition and considering the order dated 10 November 2025 granting liberty to the writ petitioner to approach the learned Single Judge for appropriate reliefs in the pending writ petition, W.P.(C) No.26067 of 2025 is detagged.

6. The written notes of arguments filed by the learned Amicus Curiae are taken on record.

7. The Bank shall file the necessary documents showing closure of the account upon the writ petitioner paying the settled amount in the course of the day.

6. The certificate/letter issued by the Bank on 11 November 2025 was taken on record. The said letter reads as follows:

“Union Bank

ASSET RECOVERY BRANCH, ERNAKULAM,
Ravipuram, M.G. Road, Ernakulam, Kerala State,
PIN – 682 035

Email: arb.ernakulam@unionbankofindia.bank

Ref. No. ARB/2025-26/484 Date: 11.11.2025

Without Prejudice



M/S. Grids Engineers and Contractors,
MMC/IX/456A7
ATHIRA COMPLEX,
MUDAVOOR P.O.,
MUVATTUPUZHA, ERNAKULAM-686669.

Sir/Madam,

Sub: Closure of your loan account – M/s. Grids
Engineers and Contractors.

(1) 121730100032440

On receipt of the entire amount dues in the above-mentioned loan account, the said loan had been closed on 21.10.2022. This letter is being issued on the specific request of the borrower.

For UNION BANK OF INDIA
Sd/-
Branch Manager.”

7. In order to appreciate the order of reference, it is necessary to state certain background facts.

8. M/s. GRIDS Engineering and Contractors has filed W.P.(C) No.26067 of 2025 challenging Exhibit-P16 order passed by the Additional Chief Judicial Magistrate Court, Ernakulam (Special Court for the Trial of Criminal Cases against sitting and former M.P.s/M.L.A.s of the State) dated 21.06.2025 in C.M.P. No. 2430 of 2025 in M.C. No.797 of 2022 under Section



14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') as without jurisdiction. When the said writ petition came up for admission on 18 July 2025, the following interim order was passed:

“The respondent Bank is directed to file a counter meeting the allegations in the writ petition. There will be an interim stay as prayed for, for a period of one month. Post on 18.08.2025.”

9. The said interim order has the effect of disallowing the Bank to take possession of the secured asset. The said order is apparently an unreasoned order. An appeal was filed before a Division Bench of this Court being W.A. No.1802 of 2025 by the Union Bank of India, the secured creditor, having security interest over the property in question. When the writ appeal came up for consideration on 23.07.2025, the following interim order was passed:

“The learned counsel for the appellants would point out that the 1st respondent had earlier approached this Court in W.P.(C)No.18030 of 2024, feeling aggrieved by the recovery proceedings initiated under the provisions of the Securitisation And



Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. ('SARFAESI' Act for short). That writ petition was disposed of by Ext.P11 judgment dated 24.06.2024, subject to the modification in Ext.P12 order dated 18.03.2025 in R.P.No.157 of 2025. The 1st respondent, who has not chosen to comply with the directions contained in the said judgment/order, has chosen to file another writ petition, i.e., W.P. (C)No.26067 of 2025 in respect of the very same Securitisation proceedings, in which the learned Single Judge granted interim order dated 18.07.2025.

2. The learned counsel would point out the decision of the Apex Court in Ramakrishna Medical College Hospital & Research Centre v. State of Madhya Pradesh and Others [2024 SCC OnLine SC 3194] and LIC Housing Finance Ltd. v. Nagson and Company [2025 KHC OnLine 7406].

3. The learned counsel for respondents 1 and 2 seeks an adjournment.

List on 25.07.2025.”

10. Before the Division Bench, the learned counsel for the Bank has raised the question of maintainability of the writ petition on the ground of existence of efficacious alternative remedy and propriety of passing such an *ex parte* interim order in a proceeding initiated by a secured creditor under Section 13 of the SARFAESI Act relying upon the decision of the Hon'ble Supreme



Court in *LIC Housing Finance Ltd. v. Nagson and Company*¹ and *United Bank of India v. Satyawati Tondon*². The Hon'ble Division Bench set aside the interim order dated 18 July 2025 solely on the ground that “*it is not supported by reasons. Such an order cannot be sustained in view of the law laid down by the Apex Court in the decisions referred to supra.*”, meaning thereby, the decision of the Hon'ble Supreme Court in *LIC Housing Finance Ltd. v. Nagson and Company (supra)* and *United Bank of India v. Satyawati Tondon (supra)*. The operative portion of the judgment delivered by the Division Bench on 11 August 2025 is as under:

“In the result, this writ appeal is disposed of, by setting aside the interim order dated 18.07.2025 of the learned Single Judge in W.P.(C)No.26067 of 2025 on the sole ground that it is not supported by reasons. Such an order cannot be sustained in view of the law laid down by the Apex Court in the decisions referred to supra. It is made clear that this judgment will not stand in the way of the learned Single Judge considering the interim relief sought for in W.P.(C)No.26067 of 2025 afresh, after considering the legal and factual contentions raised by both sides, including the question of

1 2025 KHC OnLine 7406

2 (2010) 8 SCC 110



maintainability. So as to enable the respondents-petitioners to bring up the writ petition before the learned Single Judge, status quo as on today, in respect of the secured assets, shall be maintained for a period of two days.”

(emphasis supplied)

11. When the writ petition came up for hearing on 18 August 2025, following the aforesaid judgment, an interim order was passed as under:

“The pleadings in the writ petition show that the figure stated by the bank as due from the petitioners, when disposing of W.P(C) No. 18034/2024 on 24.06.2024, was Rs. 85 lakhs. The said figure was sought to be varied at the instance of the bank by filing an R.P., after the writ petitioners had allegedly paid the entire amount mentioned earlier. Orders were passed in R.P. 157/2025 on 18.03.2025, wherein the bank raised a contention that as of 20.05.2024, the outstanding amount would be Rs. 1,29,03,944/-. Even then, the petitioners had objected to the figure suggested by the bank. The judgment in R.P. No. 157 of 2025 dated 18.03.2025 reads as follows;

“The Standing Counsel submits that what was submitted by the Standing Counsel is incorrect and the actual amount is Rs.1,29,03,944/-. Since it is an error on the part of the Counsel, I am of the view that the said amount can be corrected. But it is made clear that this will not be treated as an amount admitted by the



petitioners or computed by this Court. The actual amount will be as adjudicated by the appropriate Tribunal. The Review Petition is, therefore, allowed to the extent of substituting the figure Rs.1,10,00,000/- appearing in paragraph 7 of the judgment as Rs.1,29,03,944/-. The figure Rs.85,00,000/- shown in paragraph 11(i) shall also stand substituted as Rs.1,04,03,944/-.”

2. It is submitted by both sides that the matter is pending consideration before the tribunal, and the amount, if any, due from the petitioners or payable by the bank in the counterclaim, has not been quantified.

3. That apart, the petitioners contends that the first application preferred by the bank under S.14 of the SARFAESI Act was dismissed, and later the same was allowed without citing any reason.

4. The judgments cited on behalf of the bank are of no help to them in a case where the amount payable by the petitioners have not yet been decided by the Tribunal, as directed by this Court. In the nature of the disputes raised in this writ petition, the statutory actions of the bank can certainly be called in question in a writ petition under Article 226 of the Constitution of India, and no judgment forecloses that. The argument/ understanding that a writ petition is not maintainable is certainly flawed.

5. Given the above, I am inclined to entertain this writ petition. The parties are directed to complete the pleadings. Meanwhile, there will be an interim stay as prayed for, pending the writ petition.



Post on 18.09.2025.”

12. This interim order was also challenged by the Bank by preferring an appeal being W.A. No.2076 of 2025 in which the interim order was set aside, *inter alia*, holding that the order did not take into consideration the issue of maintainability in its proper perspective and also without discussing the judgments relied upon by the Bank inasmuch as the said order does not state the reason for not accepting the principles laid down in the said decisions of the Hon'ble Supreme Court and in what manner the said judgments would not be applicable to the facts and circumstances of the case. For proper and better appreciation of the order of reference, it is necessary to refer to the following paragraphs of the order dated 9 September 2025 passed by the Division Bench:

“9. Law is well settled regarding the jurisdiction of the High Court to interfere with the proceedings initiated by the Bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ('SARFAESI Act' in short) in a writ petition filed under Article 226 of the Constitution of India.



10. In *Union of India v. Satyawati Tondon and Others* [(2010) 8 SCC 110], the Apex Court held thus:

24. There is another reason why the impugned order should be set aside. If respondent No. 1 had any tangible grievance against the notice issued under S.13(4) or action taken under S.14, then she could have availed remedy by filing an application under S.17(1). The expression 'any person' used in S.17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under S.13(4) or S.14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under S.17 and S.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. 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 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, 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”.

*11. 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].*

*12. 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”.

13. 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 of India, particularly when an alternative statutory remedy is available.

14. A learned Single Judge of this Court in **Jasmin K. v. State Bank of India** [2024 (3) KHC 266] reiterated the position of law laid down by the Apex Court in the aforementioned judgments.

15. From the materials on record, we notice that the



appellants have filed a detailed counter affidavit dated 30.07.2025 in the writ petition, producing therewith Ext. R1A document. The maintainability of the writ petition itself is challenged in that counter-affidavit. It is also evident from the judgment dated 11.08.2025 in Writ Appeal No.1802 of 2025 passed by this Court that the interim order dated 18.07.2025 passed by the learned Single Judge was set aside by this Court on the sole ground that it is not supported by reasons. Even then, while going through the impugned order dated 18.08.2025 passed by the learned Single Judge, we find no sufficient reasoning therein to say that the learned Single Judge has taken into consideration the issue of maintainability raised by the appellants in its proper perspective. Though in paragraph 4 of that order, it is stated that the judgments cited on behalf of the Bank are of no help to them in a case where the amount payable by the respondents/petitioners has not yet been decided by the Tribunal, the details of the judgments held by the Court as not applicable are nowhere stated in that order. Moreover, why the writ petition is maintainable and on which ground stated in Mathew K.C. [2018 (1) KHC 786] and the subsequent pronouncement of the Apex Court, the present writ petition will fall, are also not discernible from the impugned order. In such circumstances, we have no hesitation to hold that the impugned order dated 18.08.2025 passed by the learned Single Judge is liable to be set aside.

In the result, the writ appeal is allowed by setting aside the impugned order dated 18.08.2025 in W.P. (C)No.26067 of 2025. We are sure that before passing



any further interim orders, the learned Single Judge will surely consider the legal and factual contentions raised by the parties to the lis regarding the maintainability of the writ petition itself. In order to enable the respondents to bring up the writ petition before the learned Single Judge, status quo as on today, in respect of the secured assets shall be maintained for a period of two days.”

13. Instead of deciding the writ petition on merits, the learned Single Judge appears to have assumed the appellate jurisdiction over the judgment passed by the Hon’ble Division Bench as the learned Single Judge in the order of reference wanted to justify its exercise of jurisdiction under Article 226 of the Constitution of India by referring to the decisions of the Hon’ble Supreme Court in *M/s. Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and Others*³. The learned Single Judge, in fact, has questioned the propriety of the Division Bench in entertaining the writ appeal as, according to the learned Single Judge, under Section 5 of the Kerala High Court Act, 1958, the said order being interlocutory in nature, is not appealable.

14. In the order of reference, the learned Single Judge has

3 AIR 2023 SC 781



referred to the Division Bench judgment in the case of *The Inspector General of Police v. M.V. Raghavan & Others*⁴ relying upon the authoritative interpretation of the Larger Bench of five Judges in *K.S. Das v. State of Kerala*⁵ that clarified the scope and implications of Section 5 of the Kerala High Court Act. Subsequent decisions of the Hon'ble Division Benches, namely *P.T. Thomas v. Bijo Thomas*⁶, *Arakkanattil Oommen Iype v. Rajamma Joseph*⁷, *Mohammad Ali P. Board of Directors*⁸ have also been referred to, in order to demonstrate that the said appeal could not have been entertained by the Division Bench. The views of the Chief Justice M.S.Menon in *Neelakanta Kartha v. Registrar, Kerala Agrl.University*⁹ were also referred to show that His Lordship held that the learned Judge having dealt with the matter under Article 226 and taken a view which is certainly plausible, it would not be proper to interfere with such finding.

15. In the similar way, reference has been made to the

4 2007 SCC OnLine Ker 163

5 1992 SCC OnLine Ker 530

6 2021 SCC OnLine Ker 16455

7 Judgment in W.A No.1034/2022 dated 10.08.2022

8 Judgment in W.A. No.149/2022 dated 07.02.2022

9 1977 SCC OnLine Ker 36



observation of the Chief Justice Gopalan Nambiar in *Rajalekshmi Motor Service, Kozhikode v. Govt. Of Kerala and others*¹⁰ to show that the power under Article 226 of the Constitution is not trammelled by the procedural niceties of English law and the Court in appropriate circumstances can even mould the remedy.

16. The reference court was also of the view that the aforesaid judgments have been overlooked by the Division Bench by passing orders in W.A.No.2076 of 2025, whereby the learned Single Judge was asked to give additional justifications. The learned Single Judge was of the view that the Court having found that the writ petition is to be entertained for the reasons set out in the order and if the Division Bench was not convinced of the same, it could not have exercised the power under Section 5 of the Kerala High Court Act, based on the principles laid down in the judgments mentioned above, including the decision of the Larger Bench.

17. The learned Single Judge in the order of reference has criticised the judgment of the Hon'ble Division Bench in observing

10 1959 SCC OnLine Ker 118



that it is rudimentary that the writ petition could not have been dismissed as not maintainable and the back-to-back directions as to the maintainability virtually is in the form of a direction upon the learned Single Judge to decide until the result is acceptable to the Division Bench. The Division Bench has travelled far beyond the legitimate bounds of intra-court appellate scrutiny, totally contrary to the Larger Bench decision of this Court and against the Division Bench judgments that directly dealt with the very same issue.

18. The reference court has referred to the decision of the Hon'ble Supreme Court in *Shabna Abdulla v. Union of India and Others*¹¹ that has reminded the age old dictum that the learned Single Judges and Benches of the High Courts cannot refuse to follow and accept the verdict and law laid down by the Co-ordinate and even Larger Benches by citing minor difference in the facts as a ground for doing so.

19. In such factual background, the learned Single Judge in the order of reference has observed that the scope of an intra-court

11 AIR 2024 SC 4087



appeal under Section 5 of the Kerala High Court Act, 1958, in particular against the interim orders passed by the learned Single Judge, calls for consideration by a Larger Bench of this Court.

20. When this matter was placed before Mr. Justice Nitin Jamdar, the former Chief Justice of this Court, the matter was directed to be placed before the Division Bench presided by Mr. Justice Muhamed Mustaque to decide whether the matter is to be heard by a Division Bench or a Larger Bench. The writ appeal was directed to be heard along with ICR [W.P. (C)] No. 31 of 2025. Accordingly, W.A. No. 2362 of 2025 was posted along with ICR [W.P. (C)] No. 31 of 2025 and W.P.(C) No. 26067 of 2025.

21. The Hon'ble Division Bench in its order dated 10 November 2025 observed that the issues raised in the reference have serious ramifications on the practice and procedure being followed by this Court and considering the nature of the issues involved, appointed Mr. Raja Kannan, learned counsel of this Court, as *Amicus Curiae*. The said order made it clear that nothing would prevent the writ petitioners from approaching the learned Single Judge for appropriate reliefs. The said order also



made it clear that what is pending before this Court is a legal question and not a question with regard to the rights and obligations of the parties raised in the writ petition. However, the matter was not referred to a Larger Bench. The matter has now come up for final consideration.

22. The Bank has filed a writ appeal against the order of reference which, in our view, is clearly not maintainable. It is for the reference court to decide as to whether the reference should be answered or declined. The Appellant Bank does not have any say in this regard. Hence, the Writ Appeal, at the instance of the Bank has to be dismissed. Moreover, the Bank has closed the loan account on 11 November 2025, on receipt of the entire outstanding amount due in respect of the loan account and the borrower/writ petitioner was duly informed of the said fact.

23. As observed earlier, the parties have settled their disputes in the meantime and the efficacy of the interim order has now become inconsequential although an attempt has now been made to revive the said issue. However, we feel it appropriate to observe that by the order of reference, the learned Single Judge has



questioned the propriety of an order passed by an Hon'ble Division Bench which is against judicial discipline and decorum. In fact, the very same judgment on which reliance is placed, namely, ***Shabna Abdulla (supra)***, has cautioned against judicial indiscipline and reiterated that "breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation".

24. The principle laid down by Salmond in the famous treatise on jurisprudence is very pertinent. In paragraph 28, page 158 of the treatise, the learned Author opined as under:

"The general rule is that a Court is bound by the decisions of all Courts higher than itself. A High Court Judge cannot question a decision of the Court of Appeal, nor can the Court of Appeal refuse to follow judgments of the House of Lords."

25. The only exception to the doctrine of binding precedent is where the decision is passed *sub silentio* [see ***Municipal Corporation of Delhi v. Gurnam Kaur***¹²] or *per incuriam* [see ***Shanti Conductors (P) Ltd. (M/s.) and Another v. Assam State***

12 (1989) 1 SCC 101



*Electricity Board and Others*¹³, at paragraph 47].

26. The issue relating to binding precedent as raised in the reference can be answered with reference to a few decisions where the law has been succinctly enunciated. The Constitution Bench of the Hon'ble Supreme Court authoritatively settled this position in *Pradip Chandra Parija v. Pramod Chandra Patnaik*¹⁴ by holding that if a Co-ordinate Bench doubts the correctness of an earlier decision, the only permissible course is reference to a Larger Bench. Judicial indiscipline at the highest level inevitably percolates downward and destabilises the entire justice delivery system. Subsequently, in *Central Board of Dawoodi Bohra Community v. State of Maharashtra*¹⁵, another Constitutional Bench of the Hon'ble Supreme Court laid down three clear propositions:

- (a) The decision by a Bench of larger strength of the Supreme Court is binding only on any subsequent bench of lesser or coequal strength.
- (b) A Bench of lesser strength cannot disagree with a Larger Bench. In case of doubt, all that the Bench

13 (2016) 15 SCC 13

14 AIR 2002 SC 296

15 AIR 2005 SC 752



of a lesser quorum can do is to invite the attention of the Chief Justice and request that the matter be placed for hearing before a Bench of a larger quorum than the Bench whose decision has come up for consideration.

- (c) A Bench of equal strength cannot overrule another Co-ordinate Bench. But, it will be open for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength. In that case, the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law, the correctness of which is doubted.

27. This was further cemented by yet another Larger Bench of the Hon'ble Supreme Court in *Property Owners Association v. State of Maharashtra*¹⁶.

28. In *M/s. IVECO Magirus Brandschutztechnik GMBH v. Nirmal Kishore Bhartiya*¹⁷, it was observed as follows:

"What applies to the Judges of the High Courts faced with decisions of this Court where a cleavage of opinion is discernible, and particularly when the High Courts are technically bound by both decisions, equally applies to Hon'ble Judges of this Court. It would be inappropriate for a Bench,

16 2024 SCC OnLine SC 3122

17 (2024) 2 SCC 86



comprised of 2 (two) Judges of this Court, to hold which line of decisions lays down the correct law. In such a scenario, when there are decisions of this Court not expressing views in sync with each other, the first course to be adopted is to ascertain which is the decision that has been rendered by a larger Bench. Obviously, inter se decisions of this Court, a decision of a Constitution Bench would be binding on the Benches of lesser strength. None of the decisions that we have considered is rendered by a Constitution Bench. However, a sole judgment rendered by a Bench of 4 (four) Hon'ble Judges and 3 (three) decisions rendered by the Benches comprised of 3 (three) Hon'ble Judges are there, which call for deference. Ordinarily, the decision of a larger Bench has to be preferred unless of course a Bench of lesser strength doubts an earlier view, formulates the point for answer and refers the matter for further consideration by a larger Bench in accordance with law. If, however, the decisions taking divergent views are rendered by Benches of coequal strength, the next course to be adopted is to attempt to reconcile the views that appear to be divergent and to explain those contrary decisions by assuming, to the extent possible, that they applied to different facts. The other course available is to look at whether the previous decision has been noticed, considered and explained in the subsequent decision; if not, the earlier decision continues to remain binding whereas if the answer is in the affirmative, the subsequent decision becomes the binding decision. We add a caveat that if the subsequent Bench, instead of deciding the matter before it finally upon consideration of the decision of the earlier Bench, formulates the point of difference and makes a reference for a decision by a larger Bench, it is the former decision that continues to govern the field so long the larger



Bench does not decide the reference.”

(emphasis
supplied)

29. The doctrine of precedent, thus, is not a matter of convenience or choice but a binding discipline that preserves the structural integrity of the judicial system. It ensures that law develops in an orderly, coherent and hierarchical manner.

30. In this regard, we refer to the decision of this Court in *Kannappan v. RTO, Ernakulam*¹⁸, relied upon by the learned counsel for the Bank. In *Kannappan (supra)*, the issue of reference arose when a Single Judge refused to following a binding Division Bench ruling in *Velayudhan Nadar v. State of Kerala*¹⁹. Instead of applying the established precedent, the Single Judge reiterated his own previously overruled views and referred the matter to a Larger Bench. The Division Bench clarified the legal positions regarding references in paragraphs 2, 3 and 4 of the said decision, which are as follows:

“2. There can be no "hesitation" for a single Judge

18 1988 (1) KLT 902

19 1986 KLT 633



to follow a Division Bench ruling binding on the single Bench for, he is bound in law to follow the Division Bench decision. The fact that the views of the learned Judge did not find acceptance at the hands of the Division Bench does not mean that whenever the identical question is raised before the learned Judge, the matter has to be again referred to a Division Bench till the views of the single Judge are endorsed by a Division or Full Bench. Brought up in the highest traditions of judicial discipline, this court cannot at any time swerve from the path of judicial decorum and propriety. We shall content ourselves by a quotation from the decision of the Supreme Court in Asstt. Collector, C. E., Chandran Nagar v. Dunlop India Ltd. (AIR 1985 SC 330) thus:-

"We desire to add and as was said in Cassel and Co. Ltd. v. Broome. 1972 AC 1027 we hope it will never be necessary for us to say so again that 'in the hierarchical system of Courts" which exists in our country, 'it is necessary for each lower tier', including the High Court, 'to accept loyally the decisions of the higher tiers'. "It is inevitable in a hierarchical system of Courts that there are decisions of the Supreme Appellate tribunal which do not attract the unanimous approval of all members of the judiciary.....But the judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted". (See observations of Lord Hailsham and Lord Diplock in Broome v. Cassell.) The better wisdom of the court below must yield to the higher wisdom of the court above. That is the



strength of the hierarchical judicial system".

3. Reiterating the same principle, in a very recent ruling of the Supreme Court in Shyamarju v. U. V. Bhat (AIR 1987 SC 2323) came down very heavily on a Division Bench which did not follow the Full Bench decision of the same court.

4. Under S.3 of the Kerala High Court Act. a single Judge may adjourn a case for being heard and determined by a Bench of two Judges. But a single Judge has no power to refer a case to a Full Bench for, that power is expressly reserved to a Bench of two Judges under S.4 of the Act. The reference now made by the learned single Judge has to be construed as a reference under S.3 to a Division Bench, even if the learned Judge intended by the use of the expression 'larger Bench', that it should be referred to a Full Bench."

31. The aforesaid decision has conclusively addressed the issue of the power of the learned Single Judge to refer a case to the Full Bench. A Single Judge of the High Court is ordinarily bound to accept as correct the judgments rendered by Courts of co-ordinate jurisdiction, as well as those of the Division Benches and Full Benches of this Court. The reason for the rule which makes a precedent binding lies in the decision to secure uniformity and certainty in the law. All that is required in the



instant case is that, the reference having arisen out of the order of the Division Bench interfering with the discretion exercised by the learned Single Judge, the order of the Division Bench needs to be respected, as judicial discipline and propriety demand that the learned Single Judge is bound by the decision of the Division Bench; and similarly, a Bench of two learned Judges should follow the decision of a Bench of three learned Judges, and in case of a difference of opinion between two Benches of equal strength, the proper course would be to refer the matter to a Bench of higher strength by setting out the reasons as to why it could not agree with the earlier judgment.

32. In the instant case, as observed earlier, the parameters laid down in *K.S.Das (supra)* do not permit the Single Judge to make a reference to a Division Bench or a Larger Bench. A Full Bench of this Court in *Marykutty Joseph v. State of Kerala*²⁰, has considered the circumstances under which a case can be referred to a Larger Bench by the Single Judge. It was observed therein that a reference is warranted only when;

20 2006 (4) KLT 447



“(i) The correctness of an earlier Division Bench decision is doubted;

(ii) Conflicting views are expressed by two Division Benches; and

(iii) The state of law has become uncertain.”

The above dictum was laid down after adverting to ***Babu Premarajan v. Superintendent of Police***²¹ and ***Cochin Malabar Estates & Industries v. State of Kerala***²².

33. None of the situations contemplated in the aforesaid decisions arise in the instant case for which a reference to the Division Bench is necessary, and it is not for the learned Single Judge to decide otherwise, considering the long line of decisions of the Hon'ble Supreme Court with regard to the exercise of jurisdiction by the writ court in a SARFAESI matter. The circumstances under which such discretion should be exercised have been spelt out in those decisions and we have also indicated the relevant circumstances in the order of reference for invoking the writ jurisdiction. However, discretion that is well reasoned normally is not interfered with by a Division Bench at an interim

21 2000 (3) KLT 177

22 2002 (1) KLT 588



stage, on the well-accepted principle that if the view expressed by the learned Single Judge is a possible and plausible view and merely because another view is possible on the same set of facts, the Division Bench may not interfere with such a discretionary order unless it is manifest from the record that it is *ex facie* and manifestly perverse or contrary to the well-established and settled principles of law.

34. Curiously, the writ petitioners are not aggrieved by either of the orders passed by the Hon'ble Division Bench whereby the Hon'ble Division Bench has repeatedly reminded the learned Single Judge with regard to the caution required to be exercised under Article 226 of the Constitution of India challenging the action taken by the secured creditors for enforcement of its security interest under the SARFAESI Act.

35. Admittedly, the first order was without any reason. Insofar as the second order is concerned, it appears that the Hon'ble Division Bench, in its wisdom, has found that although judgments of the Hon'ble Supreme Court regarding the self-imposed limitations imposed by the Constitution Courts were



relied upon by the Bank, there has been no meaningful discussion on the non-application of the principles laid down in the said judgments to the facts of the case.

36. The Hon'ble Division Bench seems to have not accepted the observations and findings of the learned Single Judge in paragraph 4 of the order dated 18 August 2025 as sufficient consideration of the judgments cited on behalf of the Bank with regard to non-entertainability of the writ petition.

37. A brief discussion of the judgments relied upon by the Bank, and their relevance and applicability to the facts of the case, was all that were required in terms of the order of the Hon'ble Division Bench dated 9 September 2025, whereby the matter was remanded for fresh consideration. Even it is assumed for the sake of argument that the Hon'ble Division Bench may have passed an order which, in the estimation of the learned Single Judge, would be contrary to any decision of a Co-ordinate Bench or a Full Bench, it was not proper for the learned Single Judge to ignore the direction of the Hon'ble Division Bench and to take up the issue of the writ petitioners to question the propriety of the



said order.

38. Moreover, we find that the judgments relied upon in the order of reference do not decide conclusively that if a point of maintainability of a writ petition is raised, which essentially is a question of discretion to be applied by the writ court in view of the existence of an efficacious alternative remedy and is decided against the respondent, the affected party who had raised an objection to entertain the writ petition due to existence of an alternative remedy even if it is an interim order, would be precluded from preferring an intra-court appeal raising the plea of discretion being applied by the learned Single Judge in entertaining the writ petitions. The order may be interlocutory or final. Whenever such a plea of alternative remedy is raised, the Court has to *prima facie* decide the said issue and give reason which could be brief for not accepting such objection at the admission stage.

39. In this context, reference needs to be made to the evolving contours of Section 5 of the Kerala High Court Act, 1958, which confers appellate power on a Bench of two Judges. The said



section reads as follows:

“5. Appeal from judgment or order of Single Judge.- An appeal shall lie to a Bench of two Judges from, --

(i) a judgment or order of a Single Judge in the exercise of original jurisdiction; or

(ii) a judgment of a Single Judge in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of original jurisdiction by Subordinate Court.”

The said provision, through its two limbs, reflects the instances under which an appeal lie before the Bench of two Judges.

40. The two limbs of Section 5 are, (i) a judgment or order of a Single Judge in the exercise of original jurisdiction: or (ii) a judgment of a Single Judge in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of original jurisdiction by the Subordinate Court.

41. The learned Single Judge has proceeded on the basis that the order passed on 18 August 2025 (which was set aside by the Division Bench by judgment dated 9 September 2025 in W.A. No.2076/2025) was in the nature of an interim order, as it did



not finally adjudicate the *lis* between the parties. Before we express our view, we may refer to the written submissions made by Mr. Raja Kannan, the learned *Amicus Curiae*, with regard to the criteria laid down by the Full Bench of this Court in ***K.S. Das (supra)***.

42. The learned *Amicus Curiae* has contended that the Full Bench in ***K.S. Das (supra)*** has interpreted, *inter alia*, the word 'order' as appearing in Section 5(1) of the Kerala High Court Act and rejected the point that the term 'order' must be construed literally. The Full Bench also rejected the proposition that 'order' must receive a wide construction, akin to Article 136 of the Constitution of India.

43. The Full Bench, at paragraph 43 of the decision in ***K.S. Das (supra)***, held that an 'order' obviously cannot include mere procedural orders or adjournment, admission of writ ... etc., which do not seriously affect the rights of the parties. The Full Bench, at paragraph 50, held that the word 'order' does not, however, mean any order whatsoever passed pending the writ



petition, but only such 'orders' which affect or touch upon the substantial rights and liabilities of parties pending the writ petition, and is not restricted necessarily to 'final orders'. The Full Bench, at paragraph 54, held that the decisions of the High Court disposing of the main writ petitions finally, whether by way of issuing writs, directions or order cannot be treated as 'orders', but as 'judgment', as it finally disposes the writ petition on merits. At paragraph 66, it was further held by the Full Bench that the nature of the 'order' appealable belongs to the category of 'intermediate orders' referred to by the Supreme Court in *Madhu Limaye v. State of Maharashtra*²³.

44. Regarding the scope and nature of the appellate powers vested under Section 5 of the Kerala High Court Act, the learned *Amicus Curiae* has submitted that the decision of the Full Bench in *K.S. Das (supra)*, provides the guiding light. The Full Bench, at paragraph 66, held that it is not necessary for the Division Bench in every case, to admit the appeal or have to modify the impugned order or set it aside the same. Discretionary orders though

23 (1977) 4 SCC 551



normally are not to be interfered with by the Division Bench, but if the said orders are without jurisdiction, contrary to law, or are perverse, and they also cause serious prejudice to the parties in such a manner that it might be difficult to restore the *status quo ante* or grant adequate compensation. The appellate powers of the Bench of two Judges as envisaged under Section 5(1) of the Kerala High Court Act, as against the 'intermediate'/discretionary orders of the Single Judge, can be exercised only on the satisfaction of the instances specified by the Full Bench in ***K.S. Das (supra)***.

45. The decision of the Full Bench in ***K.S. Das (supra)*** to which reference was made in the order of reference (*supra*) with regard to the interpretation of Section 5 of the Kerala High Court Act, in our view, does not support the order of reference, as the conclusions of the judgment delivered by the Chief Justice would unmistakably show that it is the nature of the order that matters, and if it appears that the said order substantially affects or touches upon the substantial rights or liabilities of the parties, and are matters of moment and cause substantial prejudice to



the parties, the said order even it is ad-interim or interim in nature, would be appealable. The conclusions are as follows:

“Conclusion: (1) The word 'order' in S.5(i) of the Kerala High Court Act, 1958 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 Supreme Court in Madhu Limaye's case, AIR 1978 SC 47. 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.

(2) But this does not mean that the Division Bench hearing the appeal against such 'orders' will have to admit the appeal or have to modify the impugned order or set it aside the same in every case. There is difference between the question whether an appeal lies to a Division Bench and as to the scope of interference. Normally, discretionary orders are not interfered with unless the impugned orders are without jurisdiction, contrary to law, or are perverse, and they also cause serious prejudice to the parties in such a



manner that it might be difficult to restore the status quo ante or grant adequate compensation.
The idea is to provide an internal remedy in such cases without compelling the parties to go all the way to the Supreme Court under Art.136 of the Constitution of India or increase the burden of that court unnecessarily.

(3) It will, however, be incumbent upon the appellant to serve the counsel who has appeared before the Single Judge for the opposite party (unless of course the counsel's authority has been revoked or he is dead) and when such appeals against orders come up in appeal for admission before the Division Bench, it will be open to the Bench to treat such service as mentioned above as sufficient service on the parties (unless the court, in the circumstances of the case, thinks otherwise) and to dispose of the appeal either at the stage of admission or soon thereafter, after considering the facts of the case or subsequent events. This would generally obviate admission of the Writ Appeals, issue of notice and the passing of interim orders pending Writ Appeals.”

(emphasis supplied)

46. Justice Varghese Kalliath, in his concurring judgment in **K.S. Das** (*supra*), while accepting the conclusions of the learned Chief Justice, observed as follows:

“To sum up, I agree with the conclusions of the



*learned Chief Justice and hold that an appeal is maintainable against an interlocutory order, provided it is a final order on the miscellaneous petitions in the sense that it is not an ad interim order if the order substantially affects or touches upon substantial rights and liabilities of the parties or are matters of moment or matters which would cause real legal prejudice to the parties, even though the parent original proceedings is alive. The nature of the order appealable can be classified in the category of "intermediate orders", within that frame in which the Supreme Court has used that term in **Madhu Limaye's** case (AIR 1978 SC 47). It is not necessary that to attract S.5(i) to maintain an appeal that the order should have the label of a final order in the sense that it disposes of the original proceedings under Art.226 of the Constitution."****

47. The prophetic words of Benjamin N. Cardozo, Associate Justice of the United States Supreme Court during 1932-38, that "*adherence to precedent should be the rule and not the exception*", have been reiterated by a Full Bench of this Court in **Peter v. Sara**²⁴ wherein Justice Kurian Joseph, one of the Hon'ble Judges constituting the Bench before His Lordship's elevation to the Supreme Court, observed as follows:

24 2006 (4) KLT 219 (F.B.)



*“It is the linchpin of justice system. It is intended to secure uniformity and certainty on legal positions, based on the principle of judicial comity, otherwise it brings law as well as the system to disrepute, if not the Court. Thus ordinarily, a court of coordinate jurisdiction is expected to follow the decision of a coequal Bench. Refusal is only exception and to be exercised in exceptional circumstances, not merely because a different view is possible, but because the view expressed by the court of coordinate jurisdiction is not merely wrong, but so clearly and seriously wrong that it cannot logically exist or when it is productive of public hardships or inconvenience, as observed by the Supreme Court in **M. Chhaganlal (P) Ltd. and Others v. Municipal Corporation of Greater Bombay and Others**²⁵.”*

48. The Full Bench, after reviewing the judicial decisions on the power of the learned Single Judge to refer to a Larger Bench, held as follows:

“Under Section 3 of the Kerala High Court Act, held that, a single Judge may adjourn a case for being heard and determined by a Bench of two Judges. But Single Judge has no power to refer a case to the Full Bench and that power is expressly reserved to a Bench of two Judges under Section 4 of the Kerala High Court Act.....”

A Single Judge cannot refer a matter to a Full Bench. It was



also observed that, merely because a learned Single Judge/Division Bench entertains another view or merely because another view is possible, the judgment shall not be distinguished. If the situation is so compelling, a reference for reasons and coining the question to be decided in reference can be made. A Bench of smaller strength cannot bypass the Bench of larger strength and make a reference to a Bench of still larger strength. The said decision emphasised, apart from the lack of power of a learned Single Judge to make a reference, the requirement of judicial comity and the limits to the power of a Single Judge to make such a reference.

49. The learned counsel for the Bank has relied upon the following decisions relating to the same principle:

- (i) *Brishketu Bihar Sinha v. State of Bihar*²⁶;
- (ii) *Ushakumari v. State of Kerala*²⁷; and
- (iii) *Shah Faesal v. Union of India*²⁸.

In *Shah Faesal (supra)*, it was held that a smaller Bench

26 2019 (1) KLT Online 2004 (Patna) (FB)

27 2019 (3) KLT 328

28 2020 (2) KLT Online 1105 (SC)



may only refer a matter to a larger Bench if it is shown that a subsequent decision of the Supreme Court has already cast doubt on the earlier Bench's ruling. Even then, the matter must be referred to a Bench of co-ordinate strength to the one being doubted, which may then refer it further to a larger Bench. Regarding the power of the Chief Justice, it was observed that the ultimate power to constitute a larger Bench to resolve such conflicts or doubts rests with the Chief Justice. This appears to be the majority view.

50. The substantial prejudice, as perceived by the Bank, was in forestalling the passing of an order under Section 14 of the SARFAESI Act, 2002, initially *ex parte* and, subsequently, after affording the Bank an opportunity to object to the continuation of the proceedings before the learned Single Judge on the ground that an efficacious alternative remedy is available under the SARFAESI Act, 2002. The Hon'ble Supreme Court in ***State Bank of India v. Mathew K.C.***²⁹ has clearly observed that the SARFAESI Act, 2002, is a complete code by itself.

29 (2018) 3 SCC 85



51. In this regard, it may be appropriate to refer to a few of the decisions of the Hon'ble Supreme Court with regard to the exercise of power under Article 226 of the Constitution *vis-a-vis* the SARFAESI Act, 2002.

52. In the case of *Authorized Officer, State Bank of Travancore and Another v. Mathew K.C.*³⁰, it was observed by the Hon'ble Supreme Court as follows:

“SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debts Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the respondent. The interim order was passed on the very first date, without an opportunity for the appellant to file a reply. Reliance was placed on *United Bank of India v. Satyawati Tondon* [*United Bank of India v. Satyawati Tondon*, (2010) 8 SCC 110: (2010) 3 SCC (Civ) 260] and *Sri Siddeshwara Coop. Bank Ltd. v. Ikbal* [*Sri Siddeshwara Coop. Bank Ltd. v. Ikbal*, (2013) 10 SCC 83: (2013) 4 SCC (Civ) 638]. The writ petition ought to have been dismissed at the threshold on the ground of



maintainability. The Division Bench erred in declining to interfere with the same.”

*** (emphasis
supplied)

53. In *United Bank of India v. Satyawati Tondon (supra)*, it was observed and held by the Apex Court that the remedies available to an aggrieved person against the action taken under Section 13(4) or Section 14 of the SARFAESI Act, by way of appeal under Section 17, can be said to be both expeditious and effective. On maintainability of or entertainability of a writ petition under Article 226 of the Constitution of India, in a case where the effective remedy is available to the aggrieved person, it is observed in the said decision in paragraphs 43 to 46 and 55 as under:

“43. Unfortunately, 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. 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 Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the



petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have a serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad* [*Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad*, AIR 1969 SC 556], *Whirlpool Corpn. v. Registrar of Trade Marks* [*Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1] and *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.* [*Harbanslal Sahnia v. Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107] and some other judgments, then the High Court may, after considering all the relevant



parameters and public interest, pass an appropriate interim order.

xx xxx xxxxx

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

**** (emphasis
supplied)*

54. The said principle was reiterated by the Hon'ble Supreme Court in ***Celir LLP v. Bafna Motors (Mumbai) Private Limited and Others***³¹, at paragraph 97. ***Celir LLP (supra)*** is a clear statement of law that the High Courts should not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person under the provisions of the SARFAESI Act, 2002. The Hon'ble Supreme Court in ***Satyawati Tondon (supra)*** has made the following observations:

31 (2024) 2 SCC 1



“55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

55. In *City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla*³², it was observed by the Apex Court that the Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether the petitioner has any alternative or effective remedy for the resolution of the dispute.

56. Similarly in the case of *CIT v. Chhabil Dass Agarwal*³³, the Hon’ble Supreme Court held as follows:

“15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. 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

32 (2009) 1 SCC 168

33 (2014) 1 SCC 603



been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1964 SC 1419], Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433: 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

57. It is in the aforesaid background the necessity for the Court exercising jurisdiction under Article 226 of the Constitution of India to exercise its wide discretionary power in relation to matters arising out of the SARFAESI Act is to be assessed. What the earlier Division Bench seems to have reminded the learned Single Judge of was the very narrow compass within which this power can be exercised when a writ petition is to be entertained against an action initiated under the SARFAESI Act.

58. The aforesaid direction of the Hon'ble Division Bench does



not appear to have been a dictate to the learned Single Judge to decide the writ petition against the writ petitioner, but to apply the aforesaid principles to the facts and circumstances of the case to find out whether the writ jurisdiction can be invoked or whether the parties should be left to the statutory remedies, which are found to be efficacious, where the disputes can be properly adjudicated. However, having said this, we also feel it necessary to say a few words with regard to the scope of Article 226 of the Constitution of India.

59. The scope and nature of powers exercised by District Magistrate/Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act, 2002 have been considered by the Hon'ble Supreme Court in the following decisions:

- (i) *Standard Chartered Bank v. V. Noble Kumar and Others*³⁴;
- (ii) *Authorised Officer, Indian Bank v. D. Visalakshi and Another*³⁵; and
- (iii) *Balkrishna Rama Tarle Dead Through Legal Representatives and Another v. Phoenix ARC Private Limited and Others*³⁶.

34 (2013) 9 SCC 620

35 (2019) 20 SCC 47

36 (2023) 1 SCC 662



60. It was observed in ***Balkrishna Rama Tarle*** (*supra*) that a party aggrieved can be relegated to raise objections in a proceeding under Section 17 of the SARFAESI Act, 2002. In ***Authorised Officer, India Bank*** (*supra*), in paragraph 37, it was observed as follows:

“37. Notably, the powers and functions of CMM and CJM are equivalent and similar, in relation to matters specified in CrPC. These expressions (CMM and CJM) are interchangeable and synonymous to each other. Moreover, Section 14 of the 2002 Act does not explicitly exclude CJM from dealing with the request of the secured creditor made thereunder. The power to be exercised under Section 14 of the 2002 Act by the authority concerned is, by its very nature, non-judicial or State's coercive power. Furthermore, the borrower or the persons claiming through borrower or for that matter likely to be affected by the proposed action being in possession of the subject property, have statutory remedy under Section 17 of the 2002 Act and/or judicial review under Article 226 of the Constitution of India. In that sense, no prejudice is likely to be caused to the borrower/lessee; nor is it possible to suggest that they are rendered remediless in law. At the same time, the secured creditor who invokes the process under Section 14 of the 2002 Act does not get any



advantage much less added advantage. Taking totality of all these aspects, there is nothing wrong in giving expansive meaning to the expression “CMM”, as inclusive of CJM concerning non-metropolitan area, who is otherwise competent to discharge administrative as well as judicial functions as delineated in CrPC on the same terms as CMM. That interpretation would make the provision more meaningful. Such interpretation does not militate against the legislative intent nor it would be a case of allowing an unworthy person or authority to undertake inquiry which is limited to matters specified in Section 14 of the 2002 Act.”

61. The exercise of jurisdiction under Article 226 of the Constitution would depend on the facts of the case. If the Magistrate has not complied with the provisions of Section 14 of the SARFAESI Act, 2002 and passed an order without any affidavit filed by the Authorised Officer and it appears from record that such coercive measure was taken notwithstanding repayment of the loan amount, a writ petition can be entertained.

62. When such an order is challenged in exercise of the powers under Article 226 of the Constitution, the remedies available are limited but significant. Notwithstanding the availability of a



remedy under Section 17 of the SARFAESI Act, 2002 the writ jurisdiction under Article 226 may be invoked in the following exceptional circumstances:

(i) Lack of Jurisdiction:

An order passed under Section 14 of the SARFAESI Act would be amenable to interference under Article 226 of the Constitution where the same suffers from a jurisdictional error. If the District Magistrate or Chief Metropolitan Magistrate entertains the application of the secured creditor without the affidavit mandated under the amended Section 14(1), or proceeds to pass orders without satisfying himself regarding the compliance of the statutory pre-conditions contemplated under Section 13(2) and 13(4) of the Act, the action would be without jurisdiction. Likewise, if the Magistrate travels beyond the limited ministerial role assigned under Section 14 and adjudicates disputed questions or grants relief not contemplated by the statute, such exercise would be ultra vires the Act. In such circumstances, the writ of certiorari would lie to quash the impugned order, as the defect goes to the root of jurisdiction and renders the proceedings non est in the eye of law. The Hon'ble Supreme Court in *Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd.*³⁷ clarified the scope of inquiry under Section 14 and emphasized that the Magistrate must ensure compliance with statutory pre-conditions before granting assistance

37 (2014) 6 SCC 1



for possession. Similarly, in *NKGSB Co-operative Bank Ltd. v. Subir Chakravarty*³⁸, it was reiterated that the satisfaction under Section 14 must be based on the particulars required by law.

(ii) Fraud or Mala Fide Action:

Interference under Article 226 of the Constitution would also be warranted where the action of the secured creditor is vitiated by fraud, misrepresentation or mala fides. If an order under Section 14 of the SARFAESI Act is obtained by suppressing material facts, making false statements in the statutory affidavit, or by misleading the Magistrate regarding compliance with the mandatory requirements of the Act, the very foundation of the order would stand vitiated. It is trite law that fraud vitiates all solemn acts. In *A.V. Papayya Sastry v. Government of A.P.*³⁹, the Hon'ble Supreme Court held that any order obtained by playing fraud on the court is a nullity in the eye of law.

(iii) Violation of Natural Justice:

Though proceedings under Section 14 of the SARFAESI Act are essentially ex parte in character and the Magistrate performs a limited ministerial function, the exercise of such power must nevertheless conform to the mandatory statutory safeguards engrafted in the provision. If the Magistrate grants assistance for taking possession without ensuring compliance with the conditions

38 (2022) 10 SCC 286

39 (2020) 15 SCC 209



precedent under Sections 13(2) and 13(4), or without satisfying himself on the affidavit mandated by the proviso to Section 14(1), the order may stand vitiated for non-observance of statutory safeguards, which are themselves facets of natural justice. Further, where it is demonstrated that the secured creditor has suppressed material facts or misled the authority, resulting in denial of a fair and lawful consideration, the High Court may exercise jurisdiction under Article 226 to prevent manifest injustice. However, it is equally well settled, as held in *Satyawati Tondon* (supra) and reiterated in *Phoenix ARC Pvt. Ltd.* (supra), at paragraph 18, that if proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable.”

63. The order passed by the learned Single Judge in the writ petition must pass muster the tests laid down by the Hon'ble Supreme Court and the Division Bench required the learned Single Judge to reconsider the entertainability of the writ petition in the light of the principles laid down by the Apex Court.

64. Writ remedy is an extraordinary remedy. Where it *prima*



facie appears to the Court that the order is patently without jurisdiction or passed in violation of the principles of natural justice and the forum before which a litigant can approach for redressal of its grievances is not functional, it would be a travesty of justice if the Constitutional Court does not come to the aid of a litigant.

65. In *PHR Invent Educational Society v. UCO Bank*⁴⁰, the Hon'ble Supreme Court has carved out certain exceptions when a petition under Article 226 of the Constitution of India could be entertained in spite of availability of an alternative remedy. The exceptions are:

“(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;

(ii) it has acted in defiance of the fundamental principles of judicial procedure;

(iii) it has resorted to invoke the provisions which are repealed; and

(iv) when an order has been passed in total violation of the principles of natural justice.”



66. It is elementary that an alternative remedy is a plea which does not affect the jurisdiction of a Constitutional Court in exercising its power under Article 226 of the Constitution of India. It is a matter of choice for the Constitutional Court not to exercise its discretionary high prerogative power if there is an efficacious alternative remedy available under the Statute.

67. In *Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai & Another*⁴¹, the Hon'ble Supreme Court has held that, "... legislations are temporary, if not seasonal; the Constitution is permanent and all time law".

68. In *Godrej Sara Lee Ltd. v. The Excise and Taxation Officer-cum-Assessing Authority and Others* (*supra*) the scope of Article 226 of the Constitution vis-a-vis alternate remedy was lucidly explained by the Hon'ble Supreme Court as under:

"4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by



the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs Under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the Petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power Under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court Under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ



petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a Rule of policy, convenience and discretion rather than a Rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the Petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the Petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

5. A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision



reported in 1958 SCR 595 (State of Uttar Pradesh v. Mohd. Nooh) had the occasion to observe as follows:

*“10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this Rule requiring the exhaustion of statutory remedies before the writ will be granted is a Rule of policy, convenience and discretion rather than a Rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. ***”*

6. At the end of the last century, this Court in paragraph 15 of the its decision reported in (1998) 8 SCC 1 (Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors. carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:



(i) where the writ petition seeks enforcement of any of the fundamental rights;

(ii) where there is violation of principles of natural justice;

(iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged.

7. Not too long ago, this Court in its decision reported in (2022) 16 SCC 447 (Assistant Commissioner of State Tax v. M/s. Commercial Steel Limited) has reiterated the same principles in paragraph 11.

8.where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available."

(emphasis

supplied)

69. Very often, the Court may, at the initial stage, admit a writ petition and grant interim relief without deciding the question as to whether the existence of an alternative remedy would be a bar to the writ petition, as more often than not, an interim order is passed *ex parte*, giving no chance to the respondent to raise the issue of maintainability in the sense of entertainability of the writ petition in view of the existence of an alternative remedy or for



any other reasons. The writ court, notwithstanding the existence of an alternative remedy, may even decide the writ petition on merits and dismiss it if it comes to a finding that there is suppression of material facts or that it is not a fit case for exercising such an extraordinary power.

70. If, however, the plea of alternative remedy is not pleaded in the affidavit and the writ petition is decided on merits, it would not be open for the affected party, in an appeal, to raise the plea of efficacious alternative remedy. It would operate as an estoppel, waiver and acquiescence. Moreover, the alternative remedy has to be “efficacious”.

71. The reference to the decision in *M/s. Godrej Sara Lee Ltd.* clarifies the distinction between the maintainability and entertainability of a writ petition, terms which are often used interchangeably.

72. In view of the aforesaid, we find that an intra-court appeal is maintainable under Section 5 of the Kerala High Court Act, 1958, *inter alia*, against an *ex parte* ad interim order or any order which has clearly affected the right of a party to pursue its statutory



remedy. The nature of the order giving rise to the reference conforms to the standard laid down by the Full Bench in *K.S.Das (supra)*.

73. The discussions on the limitations that a writ court is required to exercise, especially in relation to SARFAESI matters, and on the general scope of Article 226 of the Constitution of India, are only for the proper understanding of the nature of the order giving rise to the reference.

74. The reference is not entertained, as it is found to be incompetent for the reasons recorded above.

75. The writ appeal for the reasons already recorded stands dismissed. However, there should be no order as to costs.

Sd/-

**SOUMEN SEN,
CHIEF JUSTICE**

Sd/-

**SYAM KUMAR V. M.,
JUDGE**