



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

FRIDAY, THE 19TH DAY OF JUNE 2026 / 29TH JYAISHTA, 1948

W.A.NO.1233 OF 2026

AGAINST THE ORDER DATED 01.06.2026 IN W.P. (C) NO.9036 OF 2026 OF

THE HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

- 1 CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LIMITED
ITS REGISTERED OFFICE AT CHOLA CREST,
C54-55 & SUPER B-4, THIRU-VI-KA INDUSTRIAL ESTATE,
GUINDY, CHENNAI, REPRESENTED BY ITS MANAGING
DIRECTOR., PIN - 600032

- 2 THE MANAGER
CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LTD, 2ND
FLOOR, VJ TOWER, SERVICE ROAD,
PONNURUNNI, VYTTILA, KOCHI, PIN - 682019

BY ADV SRI.BINOY VASUDEVAN

RESPONDENT/PETITIONER:

AZHAR K M
AGED 35 YEARS
S/O. MUHAMMED K.A, ILLATH, ALANGAD,
KARUMALLOOR, PANAIKULAM, ERNAKULAM, PIN - 683511

BY ADV SHRI. A AHZAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19.06.2026,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“C.R”****JUDGMENT****Anil K. Narendran, J.**

The appellants, namely, Cholamandalam Investment and Finance Company and its Manager, are the respondents in W.P.(C)No.9036 of 2026, a writ petition filed by the respondent herein-petitioner, who availed a vehicle loan for an amount of Rs.10,83,667/- from the appellants for purchasing a goods carriage bearing registration No.KL-41/W-1042. In the writ petition filed invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner is seeking a writ of certiorari to quash Ext.P3 pre-sale letter dated 11.02.2026 issued by the respondents, wherein it is stated that possession of the vehicle was taken on 10.02.2026, on account of the default committed by the petitioner under the loan agreement; a writ of mandamus commanding the respondents to restore possession of vehicle bearing registration No.KL-41/W-1042 to the petitioner; a direction to the respondents to consider the payments already made by the petitioner and to regularise the loan account; and an interim order restraining the respondents from selling or encumbering the vehicle pending disposal of the



writ petition.

2. W.P.(C)No.9036 of 2026 filed by the petitioner on 06.03.2026, to quash Ext.P3 pre-sale letter dated 11.02.2026 issued by the respondents and seeking other consequential reliefs, which came up for admission before the learned Single Judge on 09.03.2026, was posted to 12.03.2026. In that writ petition, a statement on behalf of the respondents was filed on 11.02.2026, along with I.A.No.1 of 2026, a verified petition, filed under Rule 84 of the Rules of the Kerala High Court, 1971, wherein it is stated that the said statement is filed as directed by the Court. In the said statement, the respondents raised the question of maintainability of the writ petition, on the ground that in view of the law laid down by the Apex Court in **Shoba S. v. Muthoot Finance Ltd. [2025 (2) KHC 229]**, no writ will lie against a Non-Banking Financial Company (NBFC). On 23.03.2026, the respondents filed I.A.No.2 of 2026, seeking an order to consider the maintainability of W.P.(C)No.9036 of 2026 as a preliminary issue. The said interlocutory application is supported by an affidavit sworn to by the Assistant Vice President of the 1st respondent NBFC, reiterating the stand taken in the statement filed on 11.02.2026, on the question of maintainability.



3. On 01.06.2026, when W.P.(C)No.9036 of 2026 came up for consideration, the learned Single Judge passed an order, which is under challenge in this writ appeal. In the said order, after referring to the submissions made by the learned counsel for the respondents, placing reliance on the decision of the Apex Court in **Sobha S. v. Muthoot Finance Limited [2025 (2) KHC 229]**, and that made by the learned counsel for the petitioner, placing reliance on the decision of the Patna High Court in **Dhananjay Seth v. Union of India and others** [Judgment dated 19.05.2023 in Civil Writ Jurisdiction Case No.3456 of 2021 and connected cases], the learned Single Judge observed that the Court has to consider the questions raised by the parties. By the order dated 01.06.2026, a responsible officer of the 1st respondent NBFC was directed to file a counter affidavit disclosing the details stated in paragraph 3 of that order, and the writ petition was posted on 17.06.2026 for the counter affidavit of the respondents. Paragraph 3 of the order dated 01.06.2026 of the learned Single Judge reads thus;

"3. The counsel for the respondents has filed a statement that the vehicle was sold on 26.02.2026, when, according to the petitioner, the loan was availed on 28.06.2025 for a period of five years, and the vehicle was seized by the



respondents only on 10.02.2026. The vehicle is seized from Hyderabad. The respondents have not stated anything regarding the date and nature of the seizure and the details of the sale of the vehicle, including the reasons for conducting the emergent sale. The statement of the counsel for the respondents is not acceptable. It is for the responsible officer of the respondent No.1 to file the counter affidavit disclosing the aforesaid details.”

4. Challenging the aforesaid order dated 01.06.2026 of the learned single Judge in W.P.(C)No.9036 of 2026, the appellants-respondents are before this Court in this intra-court appeal filed under Section 5(i) of the Kerala High Court Act, 1958. Along with this writ appeal, the appellants have produced Annexure 1, the loan agreement dated 30.05.2025, executed between the 1st appellant NBFC and the petitioner, to show that the loan agreement contains a specific clause that all the disputes between the parties will be resolved through the mechanism provided under the Arbitration and Conciliation Act, 1996.

5. Heard the learned counsel for the appellants-respondents and also the learned counsel for the respondent-petitioner.

6. During the course of arguments, the learned counsel for the appellants-respondents and also the learned counsel for



the respondent-petitioner addressed arguments on the question of maintainability of W.P.(C)No.9036 of 2026, placing reliance on the law laid down in the decisions referred to in the impugned order dated 01.06.2026 of the learned Single Judge. They also attempted to address arguments touching on the merits of the issue pending consideration before the learned Single Judge in that writ petition. We do not propose to consider the rival contention on the above aspects in this writ appeal, since W.P.(C)No.9036 of 2026 is pending consideration before the learned Single Judge, and the learned Single Judge is yet to pass orders on I.A.No.2 of 2026, on the question of maintainability of that writ petition.

7. Section 5 of the Kerala High Court Act, 1958, deals with an appeal from a judgment or order of a Single Judge. As per clause (i) of Section 5 of the said Act, an appeal shall lie to a Bench of two Judges from a judgment or order of a Single Judge in the exercise of original jurisdiction. Clause (ii) of Section 5 provides for such an appeal from 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 a subordinate court.

8. In **K.S. Das v. State of Kerala [1992 (2) KLT 358]**,



a Larger Bench of this Court held that the word 'order' in Section 5(i) of the Kerala High Court Act includes, apart from other orders, orders passed by the High Court in miscellaneous petitions filed in the writ petitions provided the orders are to be in force pending the writ petition. An appeal would lie against such orders only if the orders substantially affect or touch upon the substantial rights or liabilities of the parties or are matters of moment and cause substantial prejudice to the parties. The nature of the 'order' appealable belongs to the category of 'intermediate orders' referred to by the Apex Court in **Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551]**. The word 'order' is not confined to 'final order', which disposes of the writ petition. The 'orders' should not, however, be ad-interim orders in force pending the miscellaneous petition or orders merely of a procedural nature.

9. In **Thomas P. T. and another v. Bijo Thomas and others [2021 (6) KLT 196]**, a Division Bench of this Court noticed that the view upheld by the Larger Bench in **K.S. Das [1992 (2) KLT 358]** was that even though an appeal could be filed against an interlocutory order passed in a writ petition, to be qualified for challenge in an appeal, the order shall be either substantially affecting or touching upon the substantial rights or



liabilities of the parties or which are matters of moment and cause substantial prejudice to the parties. According to the Larger Bench, the nature of the order appealable belongs to the category of intermediate orders referred to by the Apex Court in **Madhu Limaye [(1977) 4 SCC 551]**. It was, however, clarified by the Larger Bench that such orders should not be ad-interim orders or orders merely of a procedural nature.

10. In **M/s.Grids Engineers and Contractors v. Union Bank of India [2026 (2) KHC SN 25]**, the questions that came up for consideration before the Division Bench were: whether an intra-court appeal lies under clause (i) of Section 5 of the Kerala High Court Act against an interim order of a Single Judge and what is the scope of such appellate jurisdiction; whether a Single Judge is competent to refer to a Larger Bench questioning the propriety of a Division Bench order; and whether a writ petition is entertainable under Article 226 of the Constitution of India challenging an order under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) when an efficacious alternative remedy is available. The factual matrix of the case dealt with by the Division Bench was that a partnership firm engaged in



contracting had availed credit facilities from Union Bank of India. Disputes arose over the outstanding dues, and the Bank initiated proceedings under the SARFAESI Act. The Chief Judicial Magistrate allowed the Bank's application under Section 14 of the SARFAESI Act for taking possession of the secured assets. Aggrieved, the petitioner approached the High Court challenging the order of the Chief Judicial Magistrate as without jurisdiction. The learned Single Judge granted an interim stay, which was set aside by a Division Bench for want of reasons. On remand, the learned Single Judge passed a fresh interim order, which was again set aside by the Division Bench for not meaningfully engaging with Apex Court precedents on the maintainability of writ petitions in SARFAESI matters. Instead of complying with the remand direction, the learned Single Judge made an order of reference questioning the propriety of the Division Bench judgment and raising the issue of the scope of intra-court appeals under clause (i) of Section 5 of the Kerala High Court Act, 1958. The Bank then challenged the order of reference by filing a writ appeal under clause (i) of Section 5 of the Act.

11. In **M/s.Grids Engineers and Contractors [2026 (2) KHC SN 25]**, a Division Bench of this Court held that the



appellate powers of the Bench of two Judges as envisaged under clause (i) of Section 5 of the Kerala High Court Act, as against the 'intermediate' or discretionary orders of the Single Judge, can be exercised only on the satisfaction of the instances specified by the Large Bench in **K.S. Das [1992 (2) KLT 358]**. The word 'order' in clause (i) of Section 5 of the said Act includes, apart from other orders, orders passed by the High Court in miscellaneous petitions filed in the writ petitions, provided the orders are to be in force pending the writ petition.

12. In **M/s.Grids Engineers and Contractors [2026 (2) KHC SN 25]**, the Division Bench noticed that an appeal under clause (i) of Section 5 of the Kerala High Court Act 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. But this does not mean that the Division Bench hearing the appeal against such 'orders' will have to admit the appeal or modify the impugned order or set it aside in every case. There is a difference between the question of 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 Apex Court under Article 136 of the Constitution of India or unnecessarily increasing the burden of that Court.

13. In **M/s.Grids Engineers and Contractors [2026 (2) KHC SN 25]**, the Division Bench held that an appeal is maintainable under clause (i) of Section 5 of the Kerala High Court Act 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. It is not necessary that, to attract clause (i) of Section 5 of the said Act and to maintain an appeal, the order should have the label of a final order in the sense that it disposes of the original proceedings under Article 226 of the Constitution of India. An intra-court appeal is maintainable under clause (i) of Section 5, 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 Division Bench found that the nature of the order giving rise to the reference conforms to the standard laid down by the Full Bench in **K.S. Das [1992 (2) KLT 358]**.

14. In the instant case, on 01.06.2026, when W.P.(C)No. 9036 of 2026 came up for consideration, the learned Single Judge passed the impugned order, whereby a responsible officer of the 1st respondent NBFC was directed to file a counter affidavit disclosing the details stated in paragraph 3 of that order. By that order, the writ petition was posted on 17.06.2026 for the counter affidavit of the respondents. In the said order, after referring to the rival submissions made at the Bar, placing reliance on the decision of the Apex Court in **Sobha S. [2025 (2) KHC 229]**, and the decision of the Patna High Court in **Dhananjay Seth** [Judgment dated 19.05.2023 in Civil Writ Jurisdiction Case No.3456 of 2021 and connected cases], the learned Single Judge observed that the Court has to consider the questions raised by the parties.

15. A reading of the impugned order dated 01.06.2026 in W.P.(C)No.9036 of 2026 would show that the learned Single Judge



has not taken any decision in the said order on the question of maintainability of the writ petition, specifically raised by the respondents (appellants herein) in the statement filed in that writ petition on 11.02.2026. The request made by the respondents (appellants herein) in I.A.No.2 of 2026 to consider the question of maintainability of the writ petition as a preliminary issue is also pending consideration before the learned Single Judge. In the memorandum of writ appeal, the appellants have no case that, 01.06.2026, despite a request made before the learned Single Judge to consider the question of maintainability of the writ petition as a preliminary issue, as sought for in I.A.No.2 of 2026, the learned Single Judge passed the impugned order. The appellants have also no case that the impugned order, in any manner, affected their right to proceed against the respondent pursuant to Ext.P3 pre-sale letter dated 11.02.2026.

16. The impugned order dated 01.06.2026 of the learned Single Judge cannot be termed as an order issued during the pendency of W.P.(C)No.9036 of 2026, which substantially affects or touches upon the substantial rights or liabilities of the respondents (appellants herein) or are matters of moment and cause substantial prejudice to the respondents, to maintain an



intra-court appeal under clause (i) of Section 5 of the Kerala High Court Act. By the impugned order, the learned Single Judge directed a responsible officer of the 1st respondent NBFC to file a counter affidavit in the writ petition, disclosing the details stated in paragraph 3 of that order, without deciding the question of maintainability of the writ petition or any substantive rights of the parties. The impugned order issued by the learned Single Judge, which is merely procedural in nature, is not an appealable order against which an intra-court appeal can be maintained under clause (i) of Section 5 of the Kerala High Court Act.

In the above circumstances, the challenge made in this intra-court appeal against the interim order dated 01.06.2026 of the learned Single Judge in W.P.(C)No.9036 of 2026 fails on the ground of maintainability, and this writ appeal is accordingly dismissed; however, after leaving open the rival contentions on the question of maintainability of that writ petition, for the consideration of the learned Single Judge.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE



APPENDIX OF WA NO. 1233 OF 2026

PETITIONER ANNEXURES

Annexure-1	TRUE COPY OF THE AGREEMENT EXECUTED BETWEEN THE 1ST APPELLANT AND THE RESPONDENT DATED 30-05-2025
Annexure-2	TRUE COPY OF THE JUDGMENT DATED 24-06-2025 IN W.P. (C) NO.13948/2025