IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

MONDAY, THE 27TH DAY OF JULY 2026 / 5TH SRAVANA, 1948

WP(C) NO. 23371 OF 2026

PETITIONER:

ICICI BANK LTD,
ZONAL OFFICE, PUSHPAMANGALAM ESTATE,
EDAPPALLY P.O., COCHIN, ERNAKULAM,
REPRESENTED BY ITS CHIEF MANAGER LEGAL/AUTHORISED OFFICER,SHYAM PRASHANTH,S/O.HARIHARA MENON,
PIN - 682024

BY ADVS.
SHRI.P.SATHISAN
SHRI.SHIBU B.S
SHRI.RAZAK M.
SHRI.BIJU P.PAUL
SHRI.ALVIN JEWEL S.S.
SHRI.DANIEL A.J.
SMT.VIDHYA T.U.
SMT.ABHIRAMI.S
SMT.LEENA VARGHESE
SHRI.SREEKARTHIK S. MENON

RESPONDENTS:

1 DISTRICT POLICE CHIEF,
DISTRICT POLICE OFFICE, SH 16,
OPP. POWER HOUSE, ALUVA, PIN - 683101

2 THE STATION HOUSE OFFICER,
THRIKKAKARA POLICE STATION,
THRIKKAKARA, PIN - 682030

3 **DEVADAS P.K,**
AGE AND FATHER'S NAME NOT KNOWN TO THE PETITIONER,FLAT NO. 2065, AMBADIMOOLA MIR JADE HEIGHTS,
THRIKKAKARA, PIN - 682030

4 **RESHMA K.R,**
AGE AND FATHER'S NAME NOT KNOWN TO THE PETITIONER,FLAT NO. 2065,
AMBADIMOOLA MIR JADE HEIGHTS,
THRIKKAKARA, PIN - 682030

SRI. MUFEED M.K., GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27.07.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.V. BALAKRISHNAN, J.

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W.P.(C) No. 23371 of 2026

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Dated this the 27th day of July, 2026

JUDGMENT

The petitioner – ICICI Bank Limited, by initiating proceedings under the SARFAESI Act, had taken possession of a secured asset belonging to respondents 3 and 4 after obtaining orders from the Additional Chief Judicial Magistrate, Ernakulam, with the assistance of an Advocate Commissioner, on 11.05.2026. But, the borrowers trespassed into the property again after breaking open the lock and seal and took possession of the secured asset unlawfully. Immediately, the petitioner filed Ext.P5 complaint, and on the basis of the same, Ext.P6 FIR was registered. Since the Advocate Commissioner had already filed a report and had returned the warrant stating that possession has been taken and handed over to the bank, the petitioner preferred Ext.P7 application seeking reopening of the MC and assistance for taking possession. But, as per Ext.P8 order dated 30.05.2026, the learned Additional Chief Judicial Magistrate, Ernakulam dismissed the application stating that it had become *functus officio*. It is aggrieved by Ext.P8 order, this writ petition has been filed by the petitioner.

2. Heard the learned counsel for the petitioner and the learned Government Pleader appearing for respondents 1 and 2. There is no representation for respondents 3 and 4.

3. The learned counsel for the petitioner submitted that Ext.P8 order passed by the ACJM, Ernakulam is without properly appreciating the facts and law. He submitted that respondents 3 and 4 have forcefully re-entered into the secured asset, after the secured creditor has taken lawful possession of the secured asset, as per the orders passed by

the ACJM and therefore, the petitioner, still being a secured creditor is legally entitled to seek recourse to Section 14 of the SARFAESI Act and get back possession. He further submitted that this Court in the decision in ***Federal Bank Limited, Vallithode Branch, Kozhikode v. Thahira and others*** **[2016 KHC 773]** has categorically held that the CJM in terms of Section 14 has the power to restore possession of the secured asset, if the borrower has trespassed into the property unlawfully.

4. The learned Government Pleader submitted that if an order is passed either by the CJM or by this Court directing the police to assist the petitioner for getting back possession of the secured asset, the same will be complied with by respondents 1 and 2.

5. On an anxious consideration of the submissions made at the Bar, I am of the view that there is

considerable merit in the submissions made by the learned counsel for the petitioner. The relevant portion of Section 14 of the SARFAESI Act is extracted below:-

> **14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset**—
>
> (1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him —
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> (a) take possession of such asset and documents relating thereto; and
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> (b) forward such asset and documents to the secured creditor:

6. A reading of the aforesaid Section would clearly show that whenever possession of any secured asset is

to be taken by the secured creditor, the secured creditor may, for the purpose of taking possession or control of such secured asset, make a request to the Chief Judicial Magistrate, and the Chief Judicial Magistrate, on such request, is required to take possession of the secured asset and forward the same to the secured creditor. Even if, as in the instant case, the secured creditor had, on an earlier occasion, taken possession of the secured asset and was later denuded of the possession by the borrower unlawfully, that would not change the status of the petitioner as a secured creditor or the status of the property as a secured asset. There is also nothing in Section 14 of the SARFAESI Act which would indicate that, once the Chief Judicial Magistrate has exercised jurisdiction and delivered possession of the secured asset to the secured creditor, he becomes *functus officio*. At this juncture, it should be kept in mind that the Chief Judicial Magistrate, while exercising powers under Section 14 of the SARFAESI Act, performs a purely ministerial act. His function is neither adjudicatory nor quasi-judicial, and he is also not required to adjudicate disputes involving criminal jurisdiction. Further, Section 14 of the SARFAESI Act has been incorporated to meet contingencies where the secured creditor may not be able to take possession of the secured asset by itself. If the view taken by the learned ACJM in Ext. P8 order is accepted, the same would undoubtedly defeat the very purpose for which Section 14 has been incorporated in the statute. The same would also help unscrupulous borrowers or guarantors to take the law into their own hands and denude the secured creditor of possession forcibly and with impunity, resulting in a travesty of justice. I am also supported in this view by the decision of this Court in ***Thahira*** (supra). Ergo, I have no hesitation in holding that Ext. P8 order passed by the learned ACJM cannot be sustained and is liable to be set aside.

7. In the result, this writ petition is allowed as follows:-

(i) Ext.P8 order dated 30.05.2026 in CMP No.2/2026 in MC No.90/2026 passed by the ACJM, Ernakulam is set aside.

(ii) The ACJM, Ernakulam is directed to consider CMP No.2/2026 in MC No.90/2026 afresh and pass orders thereon as per law, as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

P.V. BALAKRISHNAN
JUDGE

RMV/aks

APPENDIX OF WP(C) NO. 23371 OF 2026

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE RELEVANT EXTRACT OF THE STATEMENT OF ACCOUNT IN LOAN ACCOUNT NO. LBXXXXXXX3445417 .**
Exhibit P2	**TRUE COPY OF THE RELEVANT EXTRACT OF THE STATEMENT OF ACCOUNT IN LOAN ACCOUNT NO. LBXXXXXXX3445409**
Exhibit P3	**TRUE COPY OF THE NOTICE DATED 23.07.2025 ISSUED BY BANK UNDER SECTION 13(2) OF THE SARFAESI ACT, 2002.**
Exhibit P4	**TRUE COPY OF THE ORDER DATED 16.03.2026 PASSED BY THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM IN M.C NO.90 OF 2026**
Exhibit P5	**TRUE COPY OF THE STATEMENT OF COMPLAINT DATED 15.05.2026**
Exhibit P6	**TRUE COPY OF THE F.I.R NO.0333/2026 DATED 15.05.2026 OF THE THRIKKAKARA POLICE STATION**
Exhibit P7	**TRUE COPY OF THE SAID APPLICATION DATED 20.05.2026 FILED BY THE PETITIONER BEFORE THE HON'BLE ADDL. CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM**
Exhibit P8	**TRUE COPY OF THE IMPUGNED ORDER DATED 30.05.2026 OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM IN CMP NO.2 OF 2026 IN MC.NO.90 OF 2026**
Exhibit P9	**TRUE COPY OF THE JUDGMENT IN WP(C).NO.7741 OF 2018 DATED 21.03.2018**