



CNR : KLHC0105743/2026 ^{2026:KER:63254}



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

TUESDAY, THE 18TH DAY OF AUGUST 2026 / 27TH SRAVANA, 1948

OP (DRT) NO. 244 OF 2026

AGAINST THE ORDER DATED 07.07.2026 IN SA NO.1308 OF 2026 OF
DEBT RECOVERY TRIBUNAL, ERNAKULAM

PETITIONER:

FATHIMA M.P,
AGED 60 YEARS
W/O. LATE KOYA EDAKKORA,
POOHNATHIL HOUSE, MUNDAIKKAL THAZHAM P.O.,
KOTTAMPARAMB, KOZHIKODE, PIN - 673008

BY ADVS.
SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN
SHRI.A AL FAYAD
SHRI.JAMEEL AHAMMED M.S.
SRI.DIPU JAMES

RESPONDENTS:

- 1 THE IDBI BANK LTD,
HAVING ITS BRANCH OFFICE AT KOCHI,
KACHERIPADY PARK, KACHRIPADY JUNCTION,
KERALA, PIN - 682018
- 2 THE AUTHORISED OFFICER,
IDBI BANK LTD., RETAIL RECOVERY,
PANAMPILLY NAGAR,KOCHI, PIN - 682036



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- 3 MUHAMMED SHAFI CHALIL,
AGED 33 YEARS
S/O. KUSSAYI CHALIL, CHALIL HOUSE,
KOLAPPURAM NORTH P.O., A R NAGAR VENGARA,
MALAPPURAM, PIN - 676305
- 4 ARAKKALAKAT SIRAJUDDIN,
S/O. UMMER P.O., K. PURAM,
LICENSE NO. MDA 199, MSA 588,
(DOCUMENT WRITER),
MALAPPURAM DISTRICT, PIN - 676307
- 5 K.P. GIRISHKUMAR,
SUB REGISTRAR, CHEVAYUR SUB REGISTRAR
OFFICE, CHEVAYUR P.O., KOZHIKODE,
PIN - 673017

BY ADV SRI.K.P.SUJESH KUMAR

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR
ADMISSION ON 10.08.2026, THE COURT ON 18.08.2026
DELIVERED THE FOLLOWING:



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CR**P. V. BALAKRISHNAN, J.**.....
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.....*Dated this the 18th day of August, 2026***J U D G M E N T**

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The petitioner, aggrieved by the coercive steps taken by respondents 1 and 2, under the provisions of the SARFAESI Act in respect of the alleged secured asset, filed Ext.P1 SA before the DRT-1, Ernakulam. The SA was defectively and tentatively numbered as NDN(SA) No.1308/2026. Along with the SA, the petitioner also preferred Ext.P2 petition, seeking stay of the proceedings.

2. Ext.P1 was placed before the Tribunal by the Registry, to decide the question of maintainability and the



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Tribunal, by Ext.P7 order dated 07.07.2026, after entering into the merits of Ext.P1 and without affording a proper opportunity to the petitioner, “rejected” Ext.P1 as “not maintainable”. It is aggrieved by Ext.P7, this OP(DRT) has been filed by the petitioner.

3. Heard Sri. K. M. Firoz, the learned counsel for the petitioner and Sri. K. P. Sujesh Kumar, learned counsel appearing for the 2<sup>nd</sup> respondent. There is no representation for respondents 3 and 4. Notice to the 5<sup>th</sup> respondent is dispensed with, since he is not a necessary party.

4. The learned counsel for the petitioner submitted that Ext.P7 order passed by the DRT, is without jurisdiction and it has no power to consider the question of maintainability, by delving into the merits of the matter and thereafter, reject the SA. In order to substantiate the said contention, he relied on a Division Bench decision of the Andhra Pradesh High Court in **Kanigiri Jaya Sri v. The**



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***Debts Recovery Tribunal [2023 Supreme AP 98]***. He, further, by relying on a Division Bench decision of this Court in ***Ameena Salim v. Presiding Officer, Debts Recovery Tribunal-1, Ernakulam [2024 KHC 886]***, contended that the Tribunal went wrong in deciding a substantial issue by following a procedure meant for formal defect and the question considered not being a formal defect, can be decided only through adjudication and that too, after hearing the other side. He, also by referring to Rule 5 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (hereinafter referred to as 'the Rules'), argued that the Registrar does not have any power to refer any matter to the Presiding Officer / Tribunal *suo motu* and the powers of the Registrar are confined only to verify whether there exists any defects or not; to grant an opportunity to the petitioner to cure the defects and to pass an order declining to register the application, if the defects are not cured. Hence, he prayed that Ext.P7 order may be set aside.



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5. The learned counsel appearing for respondents 1 and 2, also fairly submitted that there is no provision enabling the Registrar to *suo motu* refer the matter to the Presiding Officer. He also submitted that the Presiding Officer does not discharge any judicial function; there is no question of him applying mind to intricate facts and law, which requires a judicial decision from the hands of the Tribunal. But, he contended that the Tribunal, at the inception stage itself, has every power to reject an application as not maintainable, if it finds that the applicant has no *locus standi*.

6. The main question to be considered in this OP(DRT) is whether the Registrar of the DRT has the power to refer an unnumbered SA filed by the applicant to the Presiding Officer / DRT for deciding the issue of maintainability / *locus standi* of the applicant. The further question which arises is whether the Tribunal has the power to reject the unnumbered SA on the ground of maintainability / *locus standi*, without adjudication at the preliminary stage



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itself. While considering the afore question, Rule 5 of the Rules which deals with the power of the Registrar and the procedure for presentation and scrutiny of the applications, assume much relevance. Rule 5 of the Rules is extracted herewith for easy reference-

#### **5. Presentation and scrutiny of applications-**

- (1) The Registrar, or, as the case may be, the officer authorised by him under rule 4, shall endorse on every application the date on which it is presented or deemed to have been presented under that rule and shall sign endorsement.
- (2) If on scrutiny, the application is found to be in order, it shall be duly registered and given a serial number.
- (3) If the application, on scrutiny, is found to be defective and the defect noticed is formal in nature, the Registrar may allow the party to rectify the same in his presence and if the said defect is not formal in nature, the Registrar, may allow the applicant such time to rectify the defect as he may deem fit.
- (4) If the concerned applicant fails to rectify the defect within the time allowed in sub rule (3), the Registrar may by order and for reasons to be recorded in writing, decline to register the application.
- (5) An appeal against the order of the Registrar under sub-rule (4) shall be made within 15



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days of the making of such order to the Presiding Officer concerned in chamber whose decision thereon shall be final.

7. So, going by the afore Rule, if the Registrar, on scrutiny of the application, finds the same in order, he has to register it. On the other hand, if the Registrar notices any defects, which are formal in nature, he can allow the party to rectify the same in his presence and in cases where the defect noted is not formal in nature, he must grant time to the applicant to rectify the defect. If the defects are cured by the applicant, the Registrar has to register the application and place it before the Tribunal for further consideration. But, if the applicant fails to rectify the defect within the time allowed, the Registrar can decline to register the application, but by passing an order in writing, with reasons. In such an event, the applicant will be having a right to file a Chamber Appeal before the Presiding Officer. Thus, Rule 5 prescribes only the afore procedure to be followed by the Registrar and nothing more. In other words, the Rule does not give any power to



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the Registrar to place the application filed by the applicant before the Presiding Officer / DRT for any reasons, much less to decide the questions of *locus standi* / maintainability.

8. At this juncture, it would be apt to take note of the decision of this Court in ***Vincent v. Housing and Urban Development Corporation*** [2003 (3) KHC 79], wherein this Court had the occasion to consider the powers of the Registrar of the DRT, in detail. After a detailed evaluation of Rules 5, 22 and 23 of the Rules, this Court has held thus:

“So a reading of Rule 5 makes it abundantly clear that the power of the Registrar is to scrutinise and ascertain whether all the formalities in filing the petitions are complied with. Sub-rule (2) provides that if the application is found to be in order, it shall be duly registered and given a serial number. If the application is defective and the defect noticed is formal in nature, the Registrar himself can allow the party to rectify the same. If the defect is not formal in nature, time has to be given to the party to cure the defects. Sub-rule (4) provides that if the party fails to rectify the defect within the time allowed, the Registrar may decline to register the application. It is very pertinent to note that he has not been given any power to 'reject' the application or 'dismiss' the same. He can only decline to register the same. The Legislature has consciously avoided using the words 'dismiss' or 'reject' in Rule 5(4) of the Rules. Further the Registrar may decline to register the application



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only if it is defective. If the party takes up a stand that there is no defect and insists that the application itself be posted before the Tribunal for deciding whether there is defect or not the Registrar cannot decline to register the application. In such a situation he is bound to post the unnumbered application itself before the Tribunal who has to take a judicial decision on the matter. The party can resort to the remedy provided under Rule 5(5) of the Rules if the application is defective and the Registrar had already passed the order declining to register the application. The right of appeal is provided only against the order passed by the Registrar declining to register the application and not against judicial order like the one passed in this case. So a reading of Sub-rules (1), (2), (3), (4) and (5) of Rule 5 makes it very clear that the power of the Registrar is only to see whether there is any defect in the application. In view of the provisions contained in Sub-rule (2) of Rule 5, if the application is not defective, the Registrar has no other option but to register it and assign a number to that application.”

(Paragraph 8)

.....

“It is true that Rule 23 provides that the Registrar can exercise those powers which are assigned to him by the Tribunal by a general or special order in writing. But there is no provision either in the Act, Rules or Regulations which confers power on a Presiding Officer of a Debt Recovery Tribunal to delegate the judicial functions which he/she will have to exercise under the Act, Rules or Regulations to a Registrar. There is a clear distinction between the administrative functions and judicial functions. Of course Rule 23(iii) confers powers on the Registrar to require a party to amend the application in accordance with law and Rule 23(v) confers powers to direct any formal amendment of records. Those



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orders are only formal. Rule 23(v) does not confer the Registrar power to order amendment of pleadings. So the Tribunal cannot issue any order conferring judicial power on the Registrar. Even if such an order is passed that order will be a nullity.”

(Paragraph 11)

.....

“The relevant provisions in the Act, Procedure Rules and Regulations extracted above show that nowhere in the Act, Rules and Regulations of Practice any power has been conferred on the Registrar to reject or dismiss an interlocutory application. It is to be noted that the Registrar of the Tribunal is only a Chief Ministerial Officer. He is not invested with any judicial powers.”

(Paragraph 13)

9. The afore dictum also thus lends support to my findings in the earlier paragraph that the Registrar has no power, other than to decline registration, if the defects are not cured, by passing a speaking order and it is only if a party insists for posting the application before the Tribunal, he can do so.

10. Another reason which prompts this Court to hold that the Registrar cannot *suo motu* refer the application to the DRT / Presiding Officer is the fact that the Registrar is



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only a Chief Ministerial Officer, and is not having judicial powers. If the Registrar is permitted to raise doubts / pose questions regarding the merits of the matter and place the matter before the Tribunal / Presiding Officer; it would undoubtedly amount to him exercising a judicial mind, which is totally impermissible as per law.

11. Moving forward, the next question to be considered is whether the DRT was correct in passing Ext.P7 order. A perusal of Ext.P7 would go to show that when the Registry placed the unnumbered SA before the Tribunal to decide its maintainability, it has delved into the matter in detail by scrutinising the documents and contentions raised by the applicant and thereafter, has found that the applicant has no *locus standi* and rejected the unnumbered SA. A Division Bench of the Hon'ble Andhra Pradesh High Court in **Kanigiri Jaya Sri** (supra) has considered a similar issue, wherein the Debts Recovery Tribunal had rejected the unnumbered SA, at the admission stage itself by holding that the application filed



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by the applicant is not maintainable. In the said decision, the Andhra Pradesh High Court, after referring to the relevant Rules, categorically held that there is no provision enabling the Presiding Officer to reject an application filed under Section 17 at the preliminary stage. It was also held that the Presiding Officer ought to have directed to number the SA and thereafter, consider the application in accordance with the procedure contemplated under the Act and Rules.

12. At this juncture, it will also be apt to take note of the decision of the Division Bench of this Court in **Ameena Salim** (supra) wherein the powers of the Presiding Officer, while considering an appeal filed under Rule 5(5) of the Rules were considered. This Court, after a scrutiny of the relevant provisions including Rule 5, held as follows:

“As seen from the above Procedure Rules, if it is in respect of formal defect, such procedure will have to be resorted. If there is any other defects in regard to the status of a party, that cannot be decided by the Registrar or the Presiding Officer in chamber. It requires a formal adjudication. That be the case, in a matter like this, where the appellant claims that the appellant is not a borrower



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or guarantor and the appellant is aggrieved by the action initiated under the SARFAESI Act, what is the table of fees to be accompanied by such application will have to be decided by the Tribunal on the judicial side. The matter will have to be placed before the Tribunal. The Tribunal, after hearing the appellant and the bank, will have to take a decision and once a decision is taken that the appellant is a guarantor or borrower, the Tribunal can insist the appellant to pay the higher fee within a time allowed and if it is not paid, the DRT can reject such application. Instead of doing so, in deciding such a substantial issue, the DRT followed a procedure that is being followed for formal defect. This cannot be treated as a formal defect. This is a question that can be decided only through the adjudication.” (Paragraph 4)

13. The afore dictum stands to advice that in cases where the defects noted by the Registrar are not formal and the issue raised is a substantial issue which requires a formal adjudication, the Tribunal cannot, by adopting the procedure that is being followed for a formal defect, decide it in Chambers but, has to consider/adjudicate it on judicial side, after hearing all the parties concerned. This, in turn, means that questions such as the status of the applicant, his *locus standi*; the question of maintainability, the question of



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limitation which may involve facts and law and such other issues involving intrinsic questions of fact cannot be decided by the Presiding Officer, without an adjudication on judicial side since, they cannot be considered as formal defects.

14. The principles which can thus be culled out from the afore discussions are as follows:-

(a) The Registrar of the DRT is only a Chief Ministerial Officer and he cannot exercise judicial functions under the Act, Rules or Regulations.

(b) The Registrar can only decline to register an application if the defects are not cured by the applicant by passing an order, with reasons.

(c) The Registrar cannot, under any circumstance, *suo motu* refer the application filed before it to the Presiding Officer / DRT.

(d) Since the Registrar is not vested with judicial powers, he cannot travel beyond the scope and ambit of Rule 5 of the Rules and delve into the application filed by the



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applicant in detail / on merits and pose questions/doubts regarding the maintainability, *locus standi*, question of limitation which may involve facts as well as law, issues which involve intrinsic questions of fact, issues which require adjudication on judicial side, etc. and refer the application to the Presiding Officer / DRT.

(e) The Registrar can post the unnumbered application before the Tribunal only in cases where the parties take up a stand that there is no defect and insist that the application itself be posted before the Tribunal for deciding the question.

(f) The Registrar cannot reject or dismiss the application filed on any grounds.

(g) The DRT has no power to reject an application filed under Section 17 of the SARFAESI Act at the preliminary stage, except where a formal defect noted by the Registrar is upheld and the applicant fails to cure that defect.

(h) The defects of other nature; not being formal



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and which requires a decision on the judicial side cannot be decided by the Presiding Officer in Chamber and such matters are to be considered by the Tribunal after numbering the application and hearing all the parties concerned. If a decision is taken against the applicant, the DRT has to grant reasonable time/opportunity to the applicant for curing the defects and it is only when the applicant fails to cure the same, the application can be rejected.

Ergo, this OP(DRT) is allowed and Ext.P7 order dated 07.07.2026 in NDN(SA) No.1308/2026 passed by the DRT-I, Ernakulam is set aside. The matter is remitted back to the Registrar of the DRT-1, Ernakulam who shall consider the application filed by the petitioner strictly confining himself to Rule 5 of the Rules and in the light of the findings rendered afore. If the defects noted by the Registrar are not complied with, he shall, by passing a speaking order, decline to register the application and if there are no defects in the application, or they are cured within the time granted, the



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Registrar shall number the application and place it before the  
Tribunal for consideration as per law.

Sd/-

**P. V. BALAKRISHNAN, JUDGE**

aks/14.08.2026



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APPENDIX OF OP (DRT) NO. 244 OF 2026

## PETITIONER'S EXHIBITS

|            |                                                                                                                       |
|------------|-----------------------------------------------------------------------------------------------------------------------|
| Exhibit P1 | A TRUE COPY OF THE SECURITIZATION APPLICATION FILED BY THE PETITIONER, WITHOUT ANNEXURES                              |
| Exhibit P2 | A TRUE COPY OF THE APPLICATION SEEKING STAY PREFERRED BY THE PETITIONER ALONG WITH EXT.P1                             |
| Exhibit P3 | A TRUE COPY OF THE SALE DEED NO. 4283 OF 2022 OF SRO CHEVAYUR                                                         |
| Exhibit P4 | A TRUE COPY OF THE PLAINT IN OS NO. 148 OF 2026 ON THE FILES OF MUNSIFF COURT-II, KOZHIKODE                           |
| Exhibit P5 | A TRUE COPY OF CMP NO. 112 OF 2026 ON THE FILES OF CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE                         |
| Exhibit P6 | A TRUE COPY OF THE AFFIDAVIT FILED IN CMP NO. 112 OF 2026 ON THE FILES OF CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE  |
| Exhibit P7 | A TRUE COPY OF ORDER DATED 7.7.2026 IN NDN (SA) NO. 1308 OF 2026 PASSED BY THE DEBTS RECOVERY TRIBUNAL-I AT ERNAKULAM |