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W.A.No.1618 of 2026

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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.

MONDAY, THE 31ST DAY OF AUGUST 2026 / 9TH BHADRA, 1948

WA NO. 1618 OF 2026

AGAINST THE JUDGMENT DATED 30.07.2026 IN WP(C) NO.3068 OF
2025 OF HIGH COURT OF KERALA

APPELLANT/S:

E.T FIROZ,
AGED 52 YEARS, S/O. E.T. MUHAMMED BASHEER, SOUMYA,
2/1788A, FLORICAN ROAD, KALATHIL AVENUE, CIVIL
STATION, MALAPPARAMBU, KOZHIKODE, PIN - 673020

BY ADV SRI.PRAVEEN.H.

RESPONDENT/S:

- 1 THE RECOVERY OFFICER, DEBTS RECOVERY TRIBUNAL-I,
KSHB BUILDING, 5TH FLOOR, PANAMPILLY NAGAR, ERNAKULAM,
KERALA, PIN - 682036
- 2 CANARA BANK,
ASSET RECOVERY BRANCH, KANAYANNUR TALUK,
ERNAKULAM, PIN - 682035
- 3 PUNJAB NATIONAL BANK,
CIRCLE OFFICE, MINI BYPASS ROAD, GOVINDAPURAM,
KOZHIKODE, PIN - 673016

C. AJITH KUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 31.08.2026, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENTDated this the 31st day of August, 2026**Soumen Sen, C.J.**

We have heard Mr. Praveen H., learned counsel for the appellant and Mr. C. Ajith Kumar, learned counsel for respondents 2 and 3.

2. The order of the Recovery Officer, passed under Section 28(4) of the Recovery of Debts and Bankruptcy Act, 1993, attaching the pre-deposit made by the appellant/writ petitioner at the time of preferring the appeal against the order of the Debt Recovery Tribunal (DRT), is challenged in this writ appeal.

3. The learned counsel for the Bank has opposed the prayer on the ground that the said order is appealable under Section 30 of the Act of 1993, inasmuch as in an earlier proceeding, being O.P.(DRT)No.401 of 2024, a prayer was made restraining the Bank/secured creditor from proceeding with the attachment or appropriation of the pre-deposit amount of ₹3,95,50,000/- lying with the Hon'ble DRT, Chennai in R.A.No.5

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of 2024 and to direct the respondent to consider the objections submitted by the appellant in this regard.

4. Mr. C. Ajith Kumar, learned counsel for respondents 2 and 3, however, raised an objection as to the maintainability of the writ petition under Article 226 of the Constitution of India and submitted that the appropriate remedy would have been to challenge the decision of the Recovery Officer under Article 227 of the Constitution of India, without conceding that the proper remedy would be to prefer an appeal against the order of the Recovery Officer.

5. We have perused O.P.(DRT) No.401 of 2024. It appears that the said prayer was incidental to the main prayer whereby the e-auction was sought to be challenged on the ground that a settlement had been arrived at between the parties and the said prayer was made on the apprehension that the respondents might appropriate the amount without considering the objections raised by the appellant. Admittedly, when the said writ petition was withdrawn, the impugned order was not in existence. The impugned order appears to have been passed



thereafter, upon consideration of the objections raised by the appellant.

6. We accept the submission made on behalf of the secured creditor that an efficacious alternative remedy is available under Section 30 of the Act of 1993, in view of the decision of the three Judge Bench of the Hon'ble Supreme Court in **Radhey Shyam and Another v. Chhabi Nath and Others**¹ in which it was held that the challenge to the judicial orders could lie by way of statutory appeal or revision or under Article 227 and not by way of a writ under Articles 226 and 32. (see paragraphs 27 and 18) and a recent decision of the Hon'ble Supreme Court in **Ajit Singh v. State of Rajasthan and Others**² where, upon consideration of the catena of decisions, it was held that, if the Tribunal is one over which the relevant high court exercises jurisdiction under Article 227 too, a petition seeking exercise of the power of judicial superintendence could also be maintainable thereagainst. The relevant observations are as under:

1 (2015) 5 SCC 423

2 2026 SCC OnLine SC 1372



“23. Summing up this part of the discussion, we hold that orders made by a tribunal constituted by a law, which has Article 323A of the Constitution as its source, can be challenged before the high courts under Article 226 of the Constitution. On the other hand, if the tribunal is one over which the relevant high court exercises jurisdiction under Article 227 too, a petition seeking exercise of the power of judicial superintendence could also be maintainable thereagainst. If the rules of the relevant high court permit, a combined application could also be instituted. By extension, orders made by tribunals constituted by law enacted in terms of Article 323B would similarly be amenable to challenge either under Article 226, or Article 227, or both (if the rules so permit). The same logic would apply even to orders of statutory tribunals (like the STAT under the MV Act) and it can be challenged in writ proceedings under Article 226 or even in proceedings under Article 227 or both, subject to the rules permitting it. It is vital to remember that exercise of discretion under Article 226 cannot, however, be refused merely because the tribunal’s order could also have been challenged under Article 227. In the process, we approve the decision of the Full Bench of the High Court at Calcutta in *Bhowanipore Gujrati Education Society v. Kolkata Municipal Corporation* involving a similar issue.”

7. The question concerning maintainability of the writ petition challenging the order of the Recovery Officer filed



invoking Article 226 of the Constitution involves a question of law and hence, we permit the respondents to raise the said contention. However, having regard to the fact that the legal position is required to be laid down with regard to the exercise of power under Section 28(4) of the Act of 1993, and in view of the observation made in paragraph 23 of **Ajit Singh** (supra), that the exercise of discretion under Article 226 of the Constitution of India cannot, however, be refused merely because the Tribunal's order could also be challenged under Article 227 of the Constitution of India, we are of the view that the said issue requires to be decided in this appeal. Nevertheless, we accept the submission of the learned counsel for the secured creditor that the application ought to have been filed under Article 227 of the Constitution. We further note that, to direct the appellant at this juncture to file an application under Article 227 of the Constitution of India would not only be unfair but would also compound the problem. Moreover, had the learned Single Judge been made aware of the judgment in **Radhey Shyam** (supra), the writ petition may not even have been entertained and could



have been dismissed giving liberty to the appellant to approach the court having jurisdiction to hear and decide the application under Article 227 of the Constitution of India. However, this Bench does not face the said problem. For the larger interest of justice, we decide the appeal, instead of once again directing the appellant to file an application under Article 227 of the Constitution of India challenging the said order of the Recovery Officer.

8. The learned counsel for the secured creditor, in all fairness, submitted that the mode of attachment contemplated under Section 28(4) of the Act of 1993 is something different from the course of action sought to be adopted by the Recovery Officer.

9. Even otherwise, in our view, Section 28(4) of the Act of 1993 is in the nature of a garnishee proceeding and does not contemplate a situation where a statutory pre-deposit which has been made under the second proviso to Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 could be attached



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invoking the said provision. Since the exercise of such power is palpably erroneous and contrary to law, we are of the view that it is necessary for the writ court to exercise its discretion under Article 226 of the Constitution of India and lay down the law to be followed by the Tribunal in similar situations.

The writ appeal is thus allowed. Ext.P7 order of attachment issued by the 1st respondent Recovery Officer is set aside.

Sd/-
Soumen Sen
Chief Justice

Sd/-
Syam Kumar V.M.
Judge

vpv



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APPENDIX OF WA NO. 1618 OF 2026

PETITIONER ANNEXURES

Annexure A1	A TRUE COPY OF THE JUDGMENT DATED 04.02.2025 IN W.P.(C) NO.3068 OF 2025
Annexure A2	A TRUE COPY OF THE JUDGMENT DATED 03.03.2025 IN W.A. NO.357 OF 2025
Annexure A3	. A TRUE COPY OF THE JUDGMENT DATED 08.10.2025 IN W.P.(C) NO.3068 OF 2025
Annexure A4	A TRUE COPY OF THE JUDGMENT DATED 23.02.2026 IN W.A. NO.2673 OF 2025