

CNR : KLHC010660082026



2026:KER:70886

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 15TH DAY OF SEPTEMBER 2026/24TH BHADRA, 1948

OP(C) NO. 2569 OF 2026

AGAINST THE ORDER DATED 18.03.2026 IN IA No.5/2025 IN OS

NO.11 OF 2025 OF THE SUB COURT, NEDUMANGAD

PETITIONER(S)/DEFENDANT NO.1 AND 2:

- 1 IFCI LIMITED REPRESENTED BY ITS AUTHORISED
OFFICER IFCI TOWER, 61, NEHRU PLACE, NEW DELHI,
PIN - 110019**
- 2 AUTHORISED OFFICER IFCI
IFCI TOWER, 61 NEHRU PLACE, NEW DELHI,
PIN - 110019**

**BY ADVS.
SMT.D.REETHA
SRI.P.V.VINOD (BENGALAM)
SHRI.AKHIL K.M.
SMT.ANJALI NAIR**

RESPONDENT(S)/PLAINTIFF AND DEFENDANTS:

- 1 HOTEL MYTHRI REPRESENTED BY ITS MANAGING
PARTNER DR. BIJU RAMESH
RAJADHANI BUILDING, SAMPTHUPATHI FORT,
THIRUVANATHAPURAM, PIN - 695023**
- 2 ABDUL RASHEED ALIAS AR A.R BABU
AGED 72 YEARS, RESIDING AT CITADEL, GOLF LINKS
ROAD, KOWDIAR P.O, THIRUVANANTHAPURAM,
PIN - 695003**

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**BY ADV
SRI.THEJAN RAJ**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON
15.09.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



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EASWARAN S., J

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Dated this the 15th day of September, 2026

J U D G M E N T

The secured creditor in a suit filed by a lessee subsequent to the creation of the mortgage has come up with this present original petition being aggrieved by the order rejecting an application under Order 7 Rule 11 of the Code of Civil Procedure.

2. The brief facts necessary for the disposal of the appeal are as follows:-

The petitioners are the secured creditor, holding a mortgage over the property of 2nd and 3rd respondents. During the pendency of the mortgage, the 2nd respondent entered into a lease agreement with the 1st respondent by a registered lease deed, which created an interest in favour of the 1st respondent for a period of nine years,



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which is contrary to the provisions of Section 65A of the Transfer of Property Act, 1882. When faced with the Securitization proceedings, the 1st respondent preferred S.A No.174/2020 before the Debt Recovery Tribunal-II, Ernakulam, which was dismissed on 05.12.2024. Notwithstanding the dismissal of S.A No.174/2020, the 1st respondent proceeded to file a suit as O.S No.11/2025 before the Sub Court, Nedumangad, seeking a prohibitory injunction restraining the secured creditor from initiating further measures under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (for short 'SARFAESI Act') and that restrained them from evicting the plaintiff from the secured asset by taking recourse to Section 14 of the SARFAESI Act. In the suit, the petitioners filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908, as I.A No.5/2025, which was directed to be considered in O.P.



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(C) No.889/2025, by this Court. In pursuance of the said direction, Ext.P6 order has been passed holding that the lease agreement was executed on 06.12.2017 and the mortgage deed executed by the borrower / respondents 2 and 3 did not contain a clause prohibiting them from creating a lease in favour of third parties. Accordingly, the application was dismissed and hence the original petition.

3. Heard Shri.D.Reetha, the learned counsel appearing for the petitioners and Shri.Thejan Raj, the learned counsel appearing for the 2nd respondent. None appeared for the 1st respondent.

4. On an anxious consideration of the submissions raised across the Bar and after perusing the impugned order, this Court is of the view that the trial court was completely remiss in not comprehending the issue regarding the maintainability of the suit in its correct perspective. This Court is completely at a loss to



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understand how the trial court could have declined the application under order 7 Rule 11 of the Code of Civil Procedure, 1908, especially when the remedy of the lessee is under Section 17(4A) of the SARFAESI Act, before the Debt Recovery Tribunal.

5. It is pertinent to note that the 1st respondent / plaintiff had, in fact, invoked the jurisdiction of the Tribunal under Section 17(4)A and had filed S.A No.174/2020, which was dismissed on 05.12.2024. Therefore, the filing of the suit is clearly an abuse of process of law, which the trial court has completely ignored, notwithstanding the settled law laid down by this Court as well as by the Supreme Court, and proceeded to entertain the suit.

6. A perusal of the impugned order shows that the trial court rejected the application filed by the petitioners on the ground that mortgage deed did not contain a clause by which the borrower has been



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prohibited from creating a lease. Hence, the lessee is entitled to maintain the suit.

7. The basic infirmity in the above finding stems from the failure of the trial court to comprehend the impact of Section 65A of the Transfer of Property Act, 1882. Section 65A provides that a mortgagor in possession is empowered to grant a lease only in accordance with the provisions thereof. Section 65 A reads as under :

Section 65 A -65A. Mortgagor's power to lease

(1) Subject to the provisions of sub-section (2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.



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(c) No such lease shall contain a covenant for renewal.

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid with a time therein specified.

(3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section.

Once the lease by a mortgagor in possession of the mortgage property is governed by the provisions of Section 65A, even if the mortgage deed does not contain a clause prohibiting the borrower from creating a further interest in the mortgaged property, a lease in contravention of Section 65A of the Transfer of Property



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Act, 1882 is not binding upon the mortgagee. It is exactly what the Debt Recovery Tribunal has held in the order passed in S.A No.174/2020.

8. The trial court, on the other hand, proceeded to hold that there is no provision under SARFAESI Act, 2002 to protect the interests of the lessee. In doing so, relied on the decision of **Harshad Govardhan Sondagar Vs International Asset Reconstruction Company** [2014 KHC 4229].

9. It is surprising to note that the trial court failed to note that the provisions of the SARFAESI Act, 2002, were amended in 2016 and Section 17(4A) was incorporated for the benefit of tenants to raise their grievances before the Tribunal against the actions of the secured creditor over the leasehold properties.

10. That apart, the Supreme Court in **Bajarang Shyamsunder Agarwal Vs Central bank of India** [(2019) (9) SCC 94] held that if a tenancy under law



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comes into existence after the creation of a mortgage but prior to the issuance of notice under Section 13(2), it has to satisfy the conditions under Section 65A of the Transfer of Property Act, 1882.

11. That apart, when the lessee had invoked the jurisdiction of the Tribunal and had obtained an adverse order, it was completely impermissible for the trial court to have entertained the suit. Therefore, the irresistible conclusion is that the filing of a suit was clearly an abuse of the process of law and hit by Section 35 of the SARFAESI Act and also barred by the principles of res judicata, in view of the dismissal of S.A. No.174/2020.

12. In the above circumstances, the petitioners were fully justified in moving an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908. Unfortunately, the Sub Court could not comprehend the position of law in its correct perspective. It is unfortunate to note that, even though



the provision of law is explicit and avenues are available for the lessee to redress their grievance, the trial court proceeds to rely on an unamended provision to hold otherwise. This is nothing short of judicial impropriety.

13. Before parting with the case, this Court would like to add a note of caution. When a statute like the SARFAESI Act, envisages a case where the remedy available to a tenant is provided under Section 17(4A) of the SARFAESI Act, the trial court should be slow to entertain such a suit and pass an injunction against the secured creditor. In the present case, when the order of the Tribunal was mentioned in the application, this Court is completely at loss, as to how the trial court could ignore the orders passed by the Tribunal and proceed to dismiss the application. Even otherwise, the decision of this court as well as the Supreme Court being binding on the subordinate court, the trial court could not have held otherwise. In the peculiar facts and circumstances, this



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Court refrains from commending further on the conduct of the proceedings by the Sub Court.

In the above circumstances, this Court is of the view that Ext.P6 order cannot be sustained. Accordingly, this original petition is allowed by setting aside Ext.P6 order. Consequently, I.A No.5/2025 in O.S No.11/2025 on the files of Sub Court, Nedumangad, will stand allowed. It is declared that O.S No.11/2025 is not maintainable. All further proceedings in the suit stand terminated forthwith.

Sd/-

**EASWARAN S.
JUDGE**

AMR



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APPENDIX OF OP(C) NO. 2569 OF 2026

PETITIONERS' EXHIBITS

- | | |
|--------------------|---|
| Exhibit P-1 | A COPY OF THE OP(C) 889/2025 FILED BY THE PETITIONER BEFORE THE HON'BLE HIGH COURT OF KERALA |
| Exhibit P-2 | A COPY OF THE PLAINT IN OS.NO.11/2025 PENDING BEFORE THE HON'BLE SUB COURT, NEDUMANGAD. |
| Exhibit P-3 | A COPY OF IA 5/2025 IN OS.NO.11/2025 FILED BY THE PETITIONER BEFORE THE HON'BLE SUB COURT, NEDUMANGAD. |
| Exhibit P-4 | A COPY OF WRITTEN STATEMENT WITHOUT DOCUMENTS IN OS.NO.11/2025 FILED BY THE PETITIONER BEFORE THE HON'BLE SUB COURT, NEDUMANGAD. |
| Exhibit P-5 | A COPY OF JUDGMENT DATED 19.01.2026 PASSED BY THE HON'BLE HIGH COURT IN OP(C)889/2025 |
| Exhibit P-6 | A TRUE COPY OF THE ORDER DATED 18.03.20026 IN I.A. NO. 5/2025 IN O.S. NO. 11/2025 |