



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 10TH DAY OF SEPTEMBER 2026 / 19TH BHADRA, 1948

OP(C) NO. 2519 OF 2026

**AGAINST THE ORDER DATED 04.07.2026 IN CMA 4/2026 IN CS NO.16 OF
2022 ,COMMERCIAL COURT, THIRUVALLA**

PETITIONER(S)/CLAIM PETITIONER:

STATE BANK OF INDIA

**A BODY OF CORPORATE CONSTITUTED AND GOVERNED BY
THE STATE BANK OF INDIA ACT, 1955, STRESSED ASSETS
MANAGEMENT BRANCH, NO.1112, RAJA PLAZA, FIRST FLOOR,
AVINAZHI ROAD, COIMBATORE, TAMIL NADU STATE
REPRESENTED BY ITS ASSISTANT GENERAL MANAGER, PIN -
641037**

BY ADV SHRI.TOM K.THOMAS

RESPONDENT(S)/COUNTER PETITIONER:

- 1 RAJU GEORGE
S/O. LATE N.M. GEORGE, NEDUMPARAMBIL GARDENS,
KUTTAPPUZHA P.O., PUNNAKKUNNAM MURI, KUTTAPPUZHA
VILLAGE, THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT,
PIN:689103, ALSO RESIDING AT NEDUMPARAMBIL HOUSE,
RAMANCHIRA, MUTHOOR P.O., THIRUVALLA,
PATHANAMTHITTA DISTRICT, PIN - 689101**
- 2 K.G. THOMAS
S/O. CHANDAPILLA GEEVARGHESE, KARIKKINETH HOUSE,
PRESENTLY RESIDING AT C/O. G.T. HOME, ANJILITHANAM
P.O., KAVIYOOR VILLAGE, THIRUVALLA TALUK,
PATHANAMTHITTA DISTRICT, PIN - 689582**
- 3 RINU THOMAS
W/O. K.G. THOMAS, KARIKKINETH HOUSE, PRESENTLY
RESIDING AT C/O. G.T. HOME, ANJILITHANAM P.O.,
KAVIYOOR VILLAGE, THIRUVALLA TALUK,
PATHANAMTHITTA DISTRICT, PIN - 689582**



2026:KER:69408

4 **THARUN K THOMAS**
S/O. K.G. THOMAS, KARIKKINETH HOUSE, PRESENTLY
RESIDING AT C/O. G.T. HOME, ANJILITHANAM P.O.,
KAVIYOOR VILLAGE, THIRUVALLA TALUK,
PATHANAMTHITTA DISTRICT, PIN - 689582

BYADVS.
SRI.BINU GEORGE
SMT.HEMALATHA

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 10.09.2026,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“C.R”****EASWARAN S., J.****OP(C) No. 2519 of 2026**Dated this the 10th day of September, 2026**JUDGMENT**

The petitioner, a secured creditor, has filed this Original Petition challenging the order passed by the Commercial Court, Thiruvalla rejecting its claim petition seeking lifting of the order of attachment. The District Court, Pathanamthitta, affirmed the order. The question posed in this Original Petition is whether a Civil Court can refuse to lift an attachment over a mortgaged property on the ground that the attachment stands effaced upon publication of a notice of sale under Section 13(8) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the “SARFAESI Act”). This Court is constrained to decide this issue since it has come to the notice of this Court that a recent tendency has developed among Civil Courts not to follow the principles laid down by the Full Bench of this Court in ***Fathima v. Canara Bank [2025 KHC OnLine 521]***, and instead, to proceed on the premise that, since the attachment gets automatically effaced, there is no requirement to pass an order lifting the



attachment.

2. The brief facts necessary for the disposal of this Original Petition are as follows:

2.1. C.S. No.16 of 2022 was instituted by respondents 2 to 4 for recovery of Rs.3,26,55,269/- (Rupees Three Crore Twenty-Six Lakh Fifty-Five Thousand Two Hundred and Sixty-Nine only). Along with the suit, the plaintiffs filed an application for attachment, and the trial court granted an order of attachment. The extent of the property sought to be attached is 24.93 Ares, comprising 9.71 Ares in Re-Sy. No.22/1/1 and 15.22 Ares in Re-Sy. No.22/1/2 of Thiruvalla Village.

2.2.The petitioner-Bank, on coming to know of the order of attachment, filed a claim petition under Order XXI Rule 58 of the Code of Civil Procedure, 1908, as I.A. No.7 of 2024, seeking lifting of the order of attachment. The trial court considered the application and dismissed it on the ground that no execution proceedings were pending so as to enable the petitioner to sustain its plea for lifting the attachment. Aggrieved by the said order, the petitioner preferred an appeal as C.M.A. No.4 of 2026, which was dismissed by the District Court,



Pathanamthitta, relying on the decision of the Division Bench of this Court in ***Axis Bank v. Hilal Ahamed Bhat and Another [2022 (4) KHC 508]***. The appellate court held that when the property is proclaimed for sale by the secured creditor-Bank, the attachment automatically gets effaced and, therefore, the claim petition is not maintainable. Challenging these orders, the petitioner has filed this Original Petition.

3. Heard Sri. Tom K. Thomas, the learned Counsel for the petitioner and Smt. Hemalatha, the learned Counsel for respondents 2 to 4.

4. Sri. Tom K. Thomas, learned counsel for the petitioner, pointed out that the first appellate court's finding that, upon publication of the notice of sale, the attachment would automatically cease and, therefore, there was no need to lift the order of attachment, cannot be sustained. He further pointed out that, though the equity of redemption can be subjected to attachment, once the right of redemption is extinguished upon publication of the notice of sale, the Civil Court could not have continued the attachment over a right, which gets extinguished upon the happening of a particular event. He further pointed out that the



application was perfectly maintainable in the light of the decision of the Full Bench of this Court in ***Fathima v. Canara Bank [2025 KHC OnLine 521]***. He also pointed out that the first appellate court completely failed to consider the impact of the Full Bench decision of this Court as well as the decision of the Supreme Court in ***Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd & Others [2024 (2) SCC 1]***.

5. *Per contra*, Smt. Hemalatha, learned counsel for respondents 2 to 4, pointed out that this Court must protect the interest of the attaching creditors. The property has a value of more than Rs.20 crores and, if the Bank sells the property for a lesser amount, the interest of the plaintiffs will also be put at peril. Therefore, the respondents submit that the orders passed by the courts below do not call for any interference and that the courts were justified in declining to lift the order of attachment. Alternatively, it is submitted that, if this Court is inclined to hold in favour of the petitioner, appropriate safeguards may be put in place to protect the interests of the plaintiffs and that the Bank may be directed to intimate respondents 2 to 4 regarding the proposed sale, enabling them to ensure that the property secures the maximum possible value so



as to protect their interests.

6. I have considered the rival submissions raised across the Bar and perused the impugned orders.

7. Before this Court proceeds to answer this question, it is necessary to consider the impact of the decision of the Division Bench of this Court in ***Axis Bank v. Hilal Ahamed Bhat* [2022(4) KHC 508]**, wherein it was held that it is open for the Civil Court to attach the equity of redemption and that the attachment gets automatically effaced once the sale notice is confirmed.

8. However, when a secured creditor comes up with an application for lifting an attachment, stating that it has priority over the property and that the continuation of the attachment operates as a clog on the marketability of the property, can the Civil Court decline to lift the attachment on the ground that the attachment gets effaced once the notice of sale is published? This question assumes significance in the present case since the appellate court refused to lift the attachment on that ground.



9. To consider this question, it is important to examine the effect of sub-section (8) of Section 13 of the SARFAESI Act, which was substituted with effect from 01.09.2016. Sub-section (8) of Section 13 of the SARFAESI Act reads as follows:

“Section 13 : Enforcement of Security interest

XXX XXX XXX

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-

[\(i\)](#)the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and

[\(ii\)](#)in case any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this subsection, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.”

10. A reading of the aforesaid provision, particularly in the light of the law laid down by the Supreme Court, shows that, under the amended Section 13(8), the right of redemption of the borrower stands extinguished upon the publication of the notice of sale, subject to the requirements of the statutory scheme. Therefore, although what is



attached is the equity of redemption, the right is defeasible and ends upon the occurrence of the statutory event contemplated under Section 13(8).

11. The further question is whether, if a right is extinguished upon the occurrence of an event such as the publication of a notice of sale under Section 13(8), it is possible to continue to attach that right. Normally, when a mortgage is created, the mortgagor retains the equity of redemption until it is extinguished in accordance with Section 60 of the Transfer of Property Act, 1882. However, when, by operation of law, the equity of redemption stands extinguished, the borrower, as the defendant in a suit, no longer possesses the right, title or interest which was the subject matter of the attachment. A right which is liable to be extinguished by operation of law cannot, after such extinguishment, continue to form the subject matter of an effective attachment.

12. An indication that a non-existing right '*In Praesenti*' cannot be attached is found in clause (m) of the proviso to Section 60(1) of the Code of Civil Procedure, 1908, which provides that an expectancy of succession by survivorship or any other merely contingent or possible right or



interest is not liable to attachment or sale in execution of a decree.

13. In ***Rajes Kanta Roy v. Santi Debi and another*** [AIR 1957 SC 255], the Supreme Court observed that a mere contingent interest, though transferable inter vivos, is not attachable. The decision also makes it clear that the question of whether an interest is vested or contingent depends upon the nature of the interest created under the instrument concerned.

14. The above is indication that, it is difficult to sustain an attachment of a right which is inherently defeasible and liable to be extinguished by operation of law. In the present case, once extinguished under Section 13(8) of the SARFAESI Act, the equity of redemption cannot continue to form the basis for an effective attachment. However, this Court does not hold that the equity of redemption is, at the threshold, immune from attachment. The Division Bench in ***Axis Bank v. Hilal Ahamed Bhat (supra)*** has already held that the equity of redemption is capable of being attached. The question here is what follows when the secured creditor approaches the Civil Court seeking lifting of such attachment.



15. No doubt, the Division Bench in ***Axis Bank v. Hilal Ahamed Bhat*** (supra) held that the Civil Court can attach an equity of redemption. The Division Bench also held that the attachment stands effaced upon publication of the notice of sale. However, the question as to whether a right which is defeasible and gets extinguished on occurrence of a statutory event can continue to be subjected to attachment was not considered in that decision. That question did not arise for consideration in the manner in which it arises in the present case.

16. As regards the scope of Sub Section (8) of Section 13, the issue is no longer *res integra*. In ***Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd. [2024 (2) SCC 1]***, the Supreme Court considered the effect of the amended sub-section (8) of Section 13. It was held that failure on the part of the borrower to tender the entire dues, including the charges, interest, costs, etc., before the publication of the auction notice, as required by Section 13(8) of the SARFAESI Act would also constitute extinguishment of the right of redemption of mortgage by the act of parties as per the proviso to Section 60 of the Transfer of Property Act 1882.



17. In ***M.Rajendran v. KPK Oil Mills and Proteins India Pvt Ltd [2025 INSC 1137]***, a three-Judge Bench of the Supreme Court resolved the conflicting views of various High Courts in what has been referred to as ‘interpretative deadlock’. The borrower's right of redemption stands extinguished upon the publication of the notice of sale in accordance with the statutory scheme.

18. Therefore, this Court is inclined to hold that a right which is not absolute, but is dependent upon the occurrence or non-occurrence of a particular statutory event and which comes to an end upon the happening of such event, cannot be treated as an unqualified proprietary interest capable of sustaining an attachment after such event has occurred. Moreover, when the secured creditor has statutory priority under Section 26E of the SARFAESI Act, after registration of the security interest, the Civil Court cannot refuse to consider an application for lifting the attachment merely on the ground that the attachment would otherwise stand effaced upon publication of the notice of sale.

19. The effect of the effacement of an attachment over a mortgaged property and the procedure to be adopted by the registering authority



came up for consideration before a Full Bench of this Court in ***Fathima v. Canara Bank [2025 KHC OnLine 521]***. The Full Bench held that, if a secured creditor seeks to have an entry relating to an attachment effaced, it must approach the court which issued the order of attachment and seek appropriate relief in accordance with the Code of Civil Procedure, 1908. The Full Bench also held that entries in the encumbrance certificate relating to an attachment made pursuant to an order of a court cannot be effaced by the registering authority on its own.

20. When the Full Bench has categorically held that the registering authority has no jurisdiction to efface an entry made pursuant to an order of a court, a secured creditor cannot be faulted for approaching the court with an application for lifting the attachment. Legally, the mere presence of an attachment entry in the encumbrance certificate may not affect the priority of the mortgagee. However, it is beyond cavil that the continued presence of such an entry may operate as a clog on the marketability of the property.

21. One must also keep in mind that for a right to be attachable under Section 60 of the Code of Civil Procedure, the interest must qualify as



'saleable property' capable of being realised to satisfy a decree. The equity of redemption held by a borrower is uniquely contingent; by operation of amended Section 13(8) of the SARFAESI Act, 2002, and the right stands statutorily extinguished upon the valid publication of an auction sale notice.

22. A right which is structurally defeasible upon an event cannot form the basis of a sustainable attachment by the civil court, because the civil court cannot logically execute a sale against a right that the law explicitly destroys by operation of statute. Such a precarious and vanishing interest must give way to a more defined right of the secured creditor. This is also an aspect which persuades this court to conclude that once an application is filed by a secured creditor seeking to lift the order of attachment based on a prior mortgage, the civil court has no other alternative but to lift the order of attachment.

23. The only enquiry possible in such cases is whether the mortgage is prior to the attachment or not. The finding of the first appellate court to the contrary is therefore unsustainable. If the secured creditor finds that the continuation of the attachment operates as a clog on its right to



enforce the mortgage, the court cannot refuse to consider the application for lifting the attachment merely on the ground that the attachment would otherwise stand effaced upon publication of the notice of sale. Moreover, both the courts below failed to consider the crucial aspect regarding the extinguishment of the equity of redemption and its effect on the continuance of the attachment. Hence the finding to the contrary is clearly erroneous.

24. Apart from the above, respondents 2 to 4 have not shown that the property was not mortgaged to the petitioner-Bank at an earlier point of time. Admittedly, respondents 2 to 4 cannot derive any priority over the secured creditor merely on the basis of their attachment, since it is trite law that an attaching creditor does not acquire any title or proprietary interest in the property merely by virtue of an order of attachment.

25. However, the learned counsel for respondents 2 to 4 expressed an apprehension that their rights would be defeated if this Court proceeds to hold that the attachment is liable to be lifted by applying the principles discussed above. Pertinently, the statute itself provides safeguards. Section 13(7) of the SARFAESI Act provides that the money



received by the secured creditor pursuant to action under Section 13(4) shall, in the absence of a contract to the contrary, be held in trust and applied first towards costs, charges and expenses and secondly towards discharge of the dues of the secured creditor, with the residue being paid to the person entitled thereto in accordance with his rights and interests. Therefore, the apprehension expressed by respondents 2 to 4 cannot, by itself, be a ground to refuse lifting of the attachment. Respondents 2 to 4 may work out their remedies in accordance with law.

26. The discussion above leads this Court to conclude that the mortgagor's equity of redemption, though a statutory right, when subjected to proceedings under the SARFAESI Act, its subsistence is curtailed by the amended Section 13(8). In view of the interpretation placed by the Supreme Court in ***Celir LLP (supra)***, the right of redemption survives only until the publication of the notice of sale in accordance with the statutory scheme. Hence, any attachment of such interest can only be subject to the statutory incidents governing the subsistence of that interest. Once the right of redemption stands extinguished, the interest which was attached no longer survives in the



same form.

27. In fine, this Court concludes that the trial court as well as the First Appellate Court erred in holding that, when a notice of sale is published, the right of redemption is extinguished and, consequently, the order of attachment automatically gets effaced, rendering an order lifting the attachment unnecessary. Once the secured creditor approaches the Civil Court with an application for lifting the attachment in accordance with the principles laid down by the Full Bench, the Civil Court is required to consider such application in accordance with law and in case the mortgage is prior to the order of attachment, must lift the order of attachment. To refuse to consider the application solely on the ground that the attachment would otherwise stand effaced would be contrary to the principle laid down by the Full Bench.

Accordingly, this Original Petition is allowed by setting aside Exts.P3 and P4 orders. Ext.P2 application shall stand allowed. The attachment ordered by the Commercial Court, Thiruvalla, in C.S. No.16 of 2022 over the claim-schedule property shall stand lifted forthwith. The Commercial Court, Thiruvalla, is directed to issue necessary



communications to the jurisdictional Sub-Registrar Office and the Village Office regarding the lifting of the order of attachment and to direct them to make necessary corrections in the relevant records and to remove the attachment entry in accordance with this judgment. This shall be done peremptorily on the date of production of the certified copy of this judgment. It is made clear that, when the petitioner-Bank proceeds to publish the notice of sale of the property, it shall intimate the same to respondents 2 to 4 as well. This direction is intended only to enable respondents 2 to 4 to ascertain whether any residue remains after adjustment of the dues of the secured creditor and to enable the parties to work out their remedies, if any, in accordance with Section 13(7) of the SARFAESI Act.

**Sd/-
EASWARAN S.
JUDGE**

Svn



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APPENDIX OF OP(C) NO. 2519 OF 2026

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE PLAINT IN C.S.NO.16 OF 2022 BEFORE THE COMMERCIAL COURT, THIRUVALLA
Exhibit P2	A TRUE COPY OF I.A.NO.7 OF 2024 IN C.S.NO.16 OF 2022
Exhibit P3	A TRUE COPY OF THE ORDER DATED 09.10.2025 IN I.A.NO.7 OF 2024 IN C.S.NO.16 OF 2022
Exhibit P4	THE CERTIFIED COPY OF THE ORDER DATED 04.07.2026 IN C.M.A.NO.4 OF 2026 ON THE FILE OF THE DISTRICT JUDGE, PATHANAMTHITTA