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RP 1089/26 IN WA 1560/26

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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 14TH DAY OF SEPTEMBER 2026 / 23RD BHADRA, 1948

RP NO. 1089 OF 2026

AGAINST THE JUDGMENT DATED 01.09.2026 IN WA NO.1560 OF
2026 OF HIGH COURT OF KERALA

REVIEW PETITIONER/S:

- 1 M/S SOUBHAGYE ROAD BUILDERS
REPRESENTED BY ITS PROPRIETOR, MOHANAN V.,
PATHRAMALIL HOUSE, MARACKAR ROAD, PERUMBAVOOR,
ERNAKULAM DISTRICT, PIN - 683542
- 2 MOHANAN V.
AGED 67 YEARS
PATHRAMALIL HOUSE, MARACKAR ROAD, PERUMBAVOOR,
ERNAKULAM DISTRICT, PIN - 683542
- 3 MRS. SUSHAMA MOHANAN
AGED 61 YEARS, W/O. SHRI MOHANAN,
PATHRAMALIL HOUSE, MARACKAR ROAD, PERUMBAVOOR,
ERNAKULAM DISTRICT, PIN - 683542

BY ADVS.
SHRI MATHEWS J. NEDUMPARA
SMT. MARIA NEDUMPARA
SHRI.SHAMEEM FAYIZ V.P.
SHRI.ROY PALLIKOODAM



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RESPONDENT/S:

- 1 **RESERVE BANK OF INDIA
REPRESENTED BY ITS GOVERNOR, CENTRAL OFFICE
BUILDING, SHAHED BHAGAT SINGH ROAD,
MUMBAI, PIN - 400001**
- 2 **BOARD OF DIRECTORS OF CANARA BANK LTD
REPRESENTED BY ITS CEO & MANAGING DIRECTOR 112,
J.C. ROAD, BENGALURU, PIN - 560002**
- 3 **CANARA BANK LIMITED
REPRESENTED BY ITS CEO & MANAGING DIRECTOR 112,
J.C. ROAD, BENGALURU, PIN - 560002**
- 4 **AUTHORISED OFFICER
CANARA BANK LTD., REGIONAL OFFICE-II, METRO
BUILDING, III FLOOR, M.G. ROAD, ERNAKULAM, PIN -
682035**
- 5 **MINISTRY OF MICRO SMALL AND MEDIUM ENTERPRISES
REPRESENTED BY ITS SECRETARY. UDYOG BHAWAN, RAFI
MARG, NEW DELHI, PIN - 110001**
- 6 **UNION OF INDIA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF
FINANCIAL SERVICES, MINISTRY OF FINANCE, 3RD FLOOR,
JEEVAN DEEP BUILDING, SANSAD MARG, NEW DELHI, PIN -
110001**
- 7 **STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001**
- 8 **GENERAL MANAGER
DISTRICT INDUSTRIES CENTRE, KAKKANADU,
ERNAKULAM, PIN - 682030**
- 9 **CHAIRMAN
MICRO AND SMALL ENTERPRISE FACILITATION COUNCIL
(MSEFC), DIRECTORATE OF INDUSTRIES COMMERCE,
VIKAS BHAVAN P.O, THIRUVANANTHAPURAM,
KERALA, PIN - 695033**



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- 0 CHAIRMAN
STATE LEVEL INTER-INSTITUTIONAL COMMITTEE REGIONAL
OFFICE, RESERVE BANK OF INDIA, BAKERY JUNCTION,
P.B. NO. 6507, THIRUVANANTHAPURAM, PIN - 695033
- 11 RAJAN JOSEPH
S/O. JOSEPH, THOZHUTHUM PARAMBIL, THRISSUR ROAD,
IRINGALAKKUDA P.O. THRISSUR, PIN - 680125
- 12 ANIL DHIRAJLAL AMBANI
39, SEA WIND, CUFFE PARADE, COLABA,
MUMBAI, PIN - 400005
- 13 MUKESH AMBANI
CHAIRMAN, RELIANCE INDUSTRIES, 3RD FLOOR,
MAKER CHAMBERS IV, 222, NARIMAN POINT,
MUMBAI, PIN - 400021
- 14 THE CHAIRMAN
STATE BANK OF INDIA, CORPORATE CENTER,
16TH FLOOR, MADAM CAMA ROAD, NARIMAN POINT,
MUMBAI, PIN - 400021

OTHER PRESENT:

SHRI K.M ANEESH
SHRI K. SANTHOSH KUMAR

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
14.09.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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ORDERDated this the 14th day of September, 2026**Soumen Sen, C.J.**

We have heard Mr. Mathews J. Nedumpara, learned counsel for the review petitioners and Mr. K.M. Aneesh representing Mr. K. Santhosh Kumar, learned counsel for respondent Nos. 2 to 4.

2. This is a petition seeking review of the judgment dated 1st September, 2026 in W.A. No.1560 of 2026 arising from W.P.(C)No.40284 of 2025, whereby this Court dismissed the challenge by the writ appellant to the SARFAESI proceedings initiated by the secured creditors. The review petition proceeds on the basis that the writ appeal was required to be dismissed on the ground of constructive res judicata, holding, inter alia, that the benefit of the notification dated 29th May, 2015 (issued under the Micro, Small and Medium Enterprises Development Act, 2006) ought to have been pleaded in the earlier W.P.(C) No.31231 of 2025. It is contended that the said finding constitutes an error apparent on the face of the record. Res



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judicata and constructive res judicata can apply only when there is a final and complete adjudication and termination of the lis. In the impugned judgment itself the Court relegated the petitioner to the Debt Recovery Tribunal (DRT), thereby, acknowledging that the dispute remains open and undetermined on merits. There being no termination of the lis, the foundational requirement for res judicata is absent, and the doctrine of constructive res judicata being parasitic upon it, cannot arise at all. Further, it is contended that this Bench has completely ignored the fact that the second writ petition was founded on a fresh cause of action, namely, the SARFAESI sale notice, which is legally distinct from the subject matter of the earlier petition. The petitioner, being an admitted MSME, was entitled to the mandatory stress-resolution protections under the said Notification, which the respondent Bank admittedly never extended. This substantive right was never adjudicated upon on merits in the earlier round of litigation.

3. Mr. Mathews J. Nedumpara, learned counsel appearing for the review petitioners has further submitted that



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on a reading of the impugned judgment it would be clear that the principle of res judicata or constructive res judicata has been wrongly applied due to the lack of adjudication in the earlier proceedings, inasmuch as petitioner No.1 is an Micro, Small and Medium Enterprises (MSME). According to the learned counsel, the Framework for Revival and Rehabilitation of MSME would be applicable and, in the absence of an Advisory Committee being constituted to act in accordance with the said Framework, the writ appellants could not have been relegated to the DRT, as the DRT would not have jurisdiction to decide the matter, the jurisdiction vesting solely with the Committee contemplated under Rule 3 of the Framework.

4. Mr. Nedumpara has relied upon an essay on the Ratio Decidendi of a Case authored by Arthur L. Goodhart, in which the learned author has stated that in an exceptional case a judge may in error base his conclusion on a non-existent fact, but it is better to suffer this mistake, which may prove of benefit to the law as a whole, however painful its results may have been to the individual litigant, than to throw doubt on every



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precedent on which our law is based. While summarising the principles, the learned author observed that the principle of the case is found by taking account (a) of the facts treated by the judge as material, and (b) his decision as based on them.

5. Mr. Nedumpara has submitted that these material facts, namely, that the cause of action for the second writ petition arose from the auction sale notice issued under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and that there was no occasion in the earlier proceedings to challenge such notice, are relevant and material factors in applying the principles of res judicata and constructive res judicata while deciding the fate of the writ appeal.

6. Mr. Nedumpara has also referred to the decision of the Hon'ble Supreme Court in **A.R. Antulay v. R.S. Nayak and Another**¹ to argue that if there is an error apparent on the face of the record the court is required to review its order.

7. We have considered the issues raised by Mr.

¹ (1988) 2 SCC 602



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Nedumpara in his arguments. The power of review emanates from Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 (CPC). As has been observed in **A.R. Antulay's** case, a constitutional court may review its order if it finds that its earlier order is in violation of the constitutional rights of a party, contrary to the express provisions of an enactment, or in violation of the principles of natural justice. Limited to the scope of the CPC, it reminds the Court that the error must be one which can be easily discerned on a mere reading of the record. An error shall be such as is apparent on the face of the record and not an error which has to be fished out and searched for. In other words, it must be an error of inadvertence. It should be something more than a mere error and must be one which is manifest on the face of the record. If the error is so apparent that, without any further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, the review should be allowed.

8. In our judgment, we have considered that the reliefs claimed in the subsequent writ petition cannot be read in



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isolation, as it is a continuation of the original cause of action. We have discussed the matter elaborately in paragraph 12 onwards, wherein every issue now raised in this review petition has been meticulously considered. We have also given our reasons for not accepting the submission that the mere failure to challenge the jurisdiction in the earlier writ petition would not stand in the way of the Court considering the sale notice. We have also considered the implication of Order II Rule 2 of the CPC in proceedings under Article 226 of the Constitution of India and have categorically stated that, in the absence of any challenge to the proposed action of the Bank, the sale notice would not furnish another ground to reopen the issue, where it has been conclusively decided that the writ petitioners have an efficacious alternative remedy under Section 17 of the SARFAESI Act.

9. The issue of finality is limited to the scope of interference and the exercise of discretion in a writ jurisdiction, and not on merits. We have refused to exercise the discretion under Article 226 of the Constitution of India for the reasons



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recorded in our judgment. It is elementary that a judgment cannot be read as a statute, and it has to be read and understood in the context of the issues raised and not what can be logically deduced from it. In ***State of M.P. and Others v. Ramesh Chandra Bajpai***², it was held that a decision is an authority for what it decides and not what can logically be deduced therefrom. In ***Indusind Media and Communications Ltd. v. Commissioner of Customs, New Delhi***³, it was held that the ratio of a decision, as is well known, must be culled out from the facts involved in a given case.

On such consideration, we do not find any reason to review our judgment. The review petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Soumen Sen,
Chief Justice

Sd/-
Syam Kumar V.M.,
Judge

vpv

² (2009) 13 SCC 635

³ (2019) 17 SCC 108