

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 24TH DAY OF MAY 2023 / 3RD JYAISHTA, 1945

OP (DRT) NO. 360 OF 2022

AGAINST THE ORDER IN IA 1261/2022 IN SA 315/2022 OF DEBT RECOVERY

TRIBUNAL-I, ERNAKULAM

PETITIONER:

JIMMY THOMAS,
AGED 49 YEARS
S/O THOMAS, RESIDING AT NAMBIARPARAMBIL HOUSE, NEAR
SADHOO COMPANY, KANNOTHUMCHAL, CHOYVA.P.O, KANNUR.,
PIN - 670006

BY ADVS.
P.BINOD
A.S.DILEEP
SUSEELA DILEEP
SUDEEP ARAVIND PANICKER

RESPONDENT:

INDIAN BANK,
SOUTH BAZAR BRANCH, KVR TOWER, SOUTH
BAZAR, KANNUR, REPRESENTED BY AUTHORISED OFFICER, INDIAN
BANK ZONAL OFFICE, KOZHIKODE., PIN - 670001

BY ADV S.EASWARAN

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION ON
24.05.2023, ALONG WITH OP (DRT).438/2022 AND CONNECTED CASES, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 24TH DAY OF MAY 2023 / 3RD JYAISHTA, 1945

WP(C) NO. 31891 OF 2022

PETITIONERS:

- 1 M/S. JIS INTERNATIONAL EXPORTS PVT. LTD.
28/60, FIRST FLOOR, G G-107, PANAMPILLY NAGAR,
ERNAKULAM-, REP. BY ITS DIRECTOR, DOMINIC SEBASTIAN, PIN
- 682036
- 2 DOMINIC SEBASTIAN
AGED 66 YEARS
S/O. SEBASTIAN MATHEW PAN:AEMPS1155G.15EIRDS AVENUE
ONE, PANAMPILLY NAGAR ERNAKULAM, PIN - 682036
- 3 MS. GEENA DOMINIC
AGED 58 YEARS
W/O. DOMINIC SEBASTIAN PAN:ACZPD6511C, 15EL-RDS AVENUE
ONE, PANAMPILLY NAGAR, ERNAKULAM., PIN - 682036
- 4 M/S ALLIANCE MARITIME PVT. LTD
CINU 63090KL 1999PTC012787 28/60, A-I, 1ST FLOOR G-
107, PANAMPILLY NAGAR, ERNAKULAM. REPRESENTED BY ITS
DIRECTOR M. DOMINIC SEBASTIAN, PIN - 682036

BY ADV C.S.ULLAS

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY THE SECRETARY MINISTRY OF FINANCE NEW
DELHI, PIN - 110001
- 2 THE REGISTRAR
DEBT RECOVERY TRIBUNAL -1, ERNAKULAM, 5 TH FLOOR, KSHB
BUILDING PANAMPILLY NAGAR, ERNAKULAM, PIN - 682036
- 3 INDIAN OVERSEAS BANK
CENTRAL OFFICE, 6 TH FLOOR, ANNEX BUILDING, 763, ANNA
SALAI, CHENNAI-, TAMILNADU, REPRESENTED BY ITS CHAIRMAN
& MANAGING DIRECTOR, PIN - 600002

4 INDIAN OVERSEAS BANK
ERNAKULAM MAIN BRANCH M.GROAD, ERNAKULAM REP.BY
AUTHORISED OFFICER AND ASST. GENERAL MANAGER MR.S.
PALANIVEL, PIN - 682015

BY ADVS.

Sunil Shankar A (SC)

VIDYA GANGADHARAN(K/000424/2020)

SANDHRA.S(K/001610/2021)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24.05.2023, ALONG WITH OP (DRT).438/2022 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 24TH DAY OF MAY 2023 / 3RD JYAISHTA, 1945

OP (DRT) NO. 438 OF 2022

**AGAINST THE ORDER DATED 18.8.2022 IN IA 1671/2022 IN SA 79/2022
OF DEBT RECOVERY TRIBUNAL-1, ERNAKULAM**

PETITIONER:

MR. CHACKO T.C
AGED 46 YEARS
S/O CHACKO, THULAMATTATHIL HOUSE, AVOLY P.O ANICADU,
MUVATTUPUZHA, ERNAKULAM, PIN - 686670

BY ADV S.S.ARAVIND

RESPONDENT:

AUTHORIZED OFFICER, THE KERALA STATE CO-OPERATIVE
BANK, PERUMBAVOOR MAIN BRANCH, YATHRI NIVAS SHOPPING
COMPLEX, AM ROAD, PERUMBAVOOR, ERNAKULAM, PIN - 683542

BY ADV N.RAGHURAJ -SC

OTHER PRESENT:

SRI. P C SASIDHARAN , SRI. SUNIL SHANKAR (SC),
SRI. S EASWARAN (SC)

SRI.N. RAGHURAJ -SC

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR
ADMISSION ON 24.05.2023, ALONG WITH OP (DRT).360/2022,
31891/2022 AND CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 24TH DAY OF MAY 2023 / 3RD JYAISHTA, 1945

OP (DRT) NO. 486 OF 2022

AGAINST THE ORDER DATED 21.11.2022 IN IA 2838/2022 IN SA
536/2022 OF DEBT RECOVERY TRIBUNAL, ERNAKULAM

PETITIONERS:

- 1 WADAKKANCHERY SILK GARDEN PRIVATE LIMITED,
MAIN ROAD, WADAKKANCHERY, TRICHUR DISTRICT, KERALA,
REPRESENTED BY ITS MANAGING DIRECTOR,
K.H.KAMALUDHEEN., PIN - 680582
- 2 K.H.KAMALUDHEEN,
AGED 50 YEARS
SIO MHASSANAR, KEERIYAMPARAMBIL.HOUSE, PAVARATTY.P.O,
TRICHUR DISTRICT, KERALA., PIN - 680507
- 3 P.A.KAMALUDDIN
AGED 60 YEARS
S/O ABDULRAHIMAN, POKKAKKILATH HOISE,
CHAKKAMKANDAM.P.O, TRICHUR DISTRICT, KERALA., PIN -
680522
- 4 STEPHEN,
AGED 55 YEARS
S/O, JOSEPH, CHIRAYAMKANDATH HOUSE, GURUVAYOOR.P.O,
TRICHUR DISTRICT, KERALA., PIN - 680101
- 5 FATHIMA,
AGED 41 YEARS
W/O KAMALUDHEEN, KEERIYAMPARAMBIL.HOUSE,
PAVARATTY.P.O, TRICHUR DISTRICT, KERALA., PIN - 680507

BY ADVS.

A.S.DILEEP

K.K.CHANDRAN PILLAI (SR.) (C-41)

P.BINOD

SUSEELA DILEEP

K.Y.SUDHEENDRAN

SUDEEP ARAVIND PANICKER

RESPONDENT/S :

THE KERALA STATE CO-OPERATIVE BANK LTD,
SAHAKARANA SATHABDHI MANDIRAM, TUDA ROPAD,
KOVILAKATHUPADAM, THIRUVAMBADY .P.O, THRISSUR,
KERALA , REPRESENTED BT AUTHORISED OFFICER., PIN -
680002

BY ADV P.C.SASIDHARAN

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION ON
24.05.2023, ALONG WITH OP (DRT).438/2022 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(CR)

**O.P (DRT) No.360 of 2022, W.P (C) No. 31891/2022,
O.P (DRT) No. 438 of 2022 and O.P (DRT) No. 486/2022**

JUDGMENT

These cases have been filed, challenging the interim orders of the Debts Recovery Tribunal (hereinafter referred to as '*the Tribunal*') in separate Securitisation Applications filed under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as '*the Act*' or as the '*SARFAESI Act*'). The petitioners contend that the Tribunal mechanically issued orders on the interlocutory applications filed in the respective Securitisation Applications without paying any heed to the contentions raised, and completely disregarding the well-settled principles governing the consideration of an application for ad-interim relief. It is contended in the main that there is a gross failure to exercise a jurisdiction vested in the Tribunal properly, warranting this Court's interference.

2. I have heard Sri. K.K Chandran Pillai, Learned Senior Advocate, and Advocates Sri. P.Binod, Sri. C.S Ullas and Sri. S.S Aravind for the Petitioners in these cases and Sri. P.C Sasidharan,

Sri.S.Easwaran and Sri Sunil Shankar for the contesting respondents (Banks/the Financial Institutions).

3. It is not necessary to examine the merits of the contentions raised before the Tribunal, in any great detail, for the consideration of the issue arising in these cases. However those contentions are to be noticed, in brief, only to consider whether there was non-application of mind and a failure by the Tribunal to exercise the jurisdiction vested in it in a proper and judicious manner. The contentions (in brief) raised before the Tribunal in each of these cases are set out below:-

(i) O.P (DRT) No.360/2022 (*S.A. No. 315/2022 before the Tribunal*)

The petitioner in O.P (DRT) No.360 of 2022 availed a cash credit facility from the Indian Bank. On default being committed in the repayment of amounts due to the bank, proceedings were initiated against the petitioner under the provisions of the Act. When steps were initiated to take physical possession of the secured asset (residential property of the petitioner), the petitioner approached the Debts Recovery Tribunal by filing a Securitisation Application under

Section 17 of the Act. The petitioner also applied for a stay of further proceedings. The petitioner had raised four contentions before the Tribunal; **(a)** That the account of the petitioner was not a non-performing asset at the time when the demand notice was issued, and therefore, the condition precedent for issuing a demand notice under Section 13(2) of the SARFAESI Act had not been satisfied; **(b)** Non-compliance with the procedure contemplated by sub-section 3A of Section 13 of the Act; **(c)** That the proceedings under the SARFAESI Act could not be initiated or continued against the petitioner for failure to register the security interest as provided under Section 26D of the SARFAESI Act; and **(d)** That the affidavit supporting the application filed before the Chief Judicial Magistrate Court, Thalassery under Section 14 of the Act was not legal or proper.

(ii) **W.P (C)No. 31891/2022** (*S.A No.224/2021 before the Tribunal*)

The petitioners availed a cash credit facility as also a working capital term loan from the Indian Overseas Bank. On default being committed, proceedings were initiated against the

petitioners prompting the petitioners to file S.A.No.224/2021 before the Tribunal. The petitioners *inter alia* contend before the Tribunal that the claim of the Bank is barred by limitation; that the proceedings under the Act are bad for the reason that there is no registration with the Central Registry as provided in Section 26D of the Act and that there is a violation of the procedure contemplated by the Act and the Rules framed thereunder in the proceedings initiated against the petitioners.

(iii) **O.P(DRT) No. 438/2022** (*S.A No. 79/2022 before the Tribunal*)

The petitioner availed of two loans for agricultural purposes. The petitioner *inter alia* contends before the Tribunal that the proceedings are barred by limitation; that there was no creation of mortgage over the property in question; that the properties which are the subject matter of the proceedings are agricultural lands (in substantial part) and therefore no proceedings can be initiated against those lands, under the provisions of the Act.

(iv) **O.P (DRT) No. 486/2022** (*S.A No.536/2022 before the Tribunal*)

The 1st petitioner availed an overdraft facility from the Kerala State Co-operative Bank Limited. The 2nd petitioner had mortgaged his property to secure the repayment of the loan. Petitioners 2, 5 and 6 had also executed personal guarantees in respect of the said facility. Petitioners 2, 3 and 5 had availed of three other loans by offering other items of property as security for repayment of the loans. On default being committed in the repayment of the aforesaid loans, proceedings were initiated against the petitioners under the provisions of the Act, prompting the petitioners to approach the Tribunal by filing S.A.No.536/2022. The petitioners *inter alia* contend, that there is no enforceable security interest at least in respect of two of the items of properties, the physical possession of which is sought to be taken under the provisions of the SARFAESI Act; that in respect of an item of property which is the subject matter of the proceedings under the Act, only undivided half share is mortgaged; that the demand notice under sub-section (2) of Section 13 has been served only on one of the borrowers as is clear from Ext.P9; that there was no registration with the Central Registry as

mandated by the provisions of Section 26D of the Act; that the Advocate Commissioner is seeking to take possession of a property other than the one that is directed to be taken possession, in the proceedings under Section 14 of the SARFAESI Act; that the affidavit filed in proceedings under Section 14 of the Act does not meet the requirements of the 1st proviso to Section 14 of the Act; that the officer who initiated the proceedings is not competent to act as an authorised officer under the provisions of the Act and that there was no reply given to the objection filed under Section 13 (3A) of the Act.

4. O.P (DRT) No.360 of 2022, W.P (C) No. 31891/2022 and O.P (DRT) No. 438 of 2022 challenge interim orders issued by the Debts Recovery Tribunal -I at Ernakulam. The Tribunal has issued identical orders (except for the amounts directed to be paid as a condition for stay). The order under challenge in O.P (DRT) No.360 of 2022 (to the extent it purports to consider the application for interim relief on merits) reads thus:-

“4. The availment of the loan by the petitioner and the deposit of title deeds have been admitted by the petitioner. The default in respect of repayment of the loan due has also been admitted by the petitioner. Be that it may so, this

Tribunal is of the considered view that without going into the merits of the case one more opportunity has to be given to the petitioner/Applicant to show their bona fides in payment of the outstanding loan dues to the Respondent Bank. Hence, Ad Interim stay is granted till 19.09.2022 with respect to the petition schedule mentioned property, against the Respondent, subject to payment of Rs.5,94,000/- directly to the Respondent Bank on or before 20.08.2022 as 1st installment and another sum of Rs.5,94,000/- directly to the respondent Bank on or before 19.09.2022 as 2nd installment. However, in the event of failure to pay any one of the installments as ordered above, the Respondent is at liberty to proceed further, without making any reference to this Tribunal and the Ad-Interim stay granted till 19.09.2022, against the Respondent, shall stand vacated and the petition in I.A. No.1261/2022 shall stand closed automatically. For filing proof of payment by the Applicant, call on 20.09.2022.”

The order under challenge in W.P (C)No. 31891/2022 (to the extent it purports to consider the application for interim relief on merits) reads thus:-

“4. The availment of the loan by the petitioners and deposit of title deeds have been admitted by the petitioners. The default in respect of repayment of the loan due has also been admitted by the petitioners. Be that it may so, this Tribunal is of the considered view that without going into the merits of the case one more opportunity has to be given to the Petitioners/Applicants to show their bona fides in payment of the outstanding loan dues to the 1st Respondent Bank. Hence, Ad Interim stay is granted till 07.09.2022 with respect to the petition schedule mentioned properties, against the Respondents, subject to payment of Rs.2,68,91,000/- directly to the 1st Respondent Bank on or before 06.08.2022 as 1st installment and another sum of Rs.2,68,91,000/- directly to the 1st Respondent Bank on or before 07.09.2022 as 2nd installment. However, in the event of failure to pay any one of the installments as ordered above, the 1st Respondent is at liberty to proceed further, without making any reference to this Tribunal

and the Ad-Interim stay granted till 07.09.2022, against the Respondents, shall stand vacated and the petition in IA No.868/2022 shall stand closed automatically. For filing proof of payment by the Applicant, call on 09.09.2022.”

The order under challenge in O.P (DRT) No. 438 of 2022 (to the extent it purports to consider the application for interim relief on merits) reads thus:-

“3. The availment of the loan by the petitioner has been admitted by the petitioner. The default in respect of repayments of the loan due has also been admitted by the petitioner. Be that it may so, this Tribunal is of the considered view that without going into the merits of the case, one more opportunity has to be given to the Petitioner/Applicant to show his bona fides in payment of the outstanding loan dues to the Respondent Bank. Hence, Ad Interim stay is granted till 17.10.2022 with respect to the petition schedule mentioned property, against the Respondent, subject to payment of Rs.10,87,248/- directly to the Respondent Bank on or before 17.09.2022 as 1st instalment and another sum of Rs.10,87,248/- directly to the Respondent Bank on or before 17.10.2022 as 2nd installment. However, in the event of failure to pay any one of the installments as ordered above, the Respondent is at liberty to proceed further, without making any reference to this Tribunal and the Ad-Interim stay granted till 17.10.2022, against the Respondent, shall stand vacated and the petition in IA No.1671/2022 shall stand closed automatically. For filing proof of payment by the Applicant, call on 18.10.2022.”

O.P (DRT) No. 486 of 2022 has been filed challenging an order passed on an application for interim relief by the DRT-II, Ernakulam.

The order under challenge in O.P (DRT) No. 486 of 2022 (to the

extent it purports to consider the application for interim relief on merits) reads thus:-

"3. On a careful consideration of the submission and available materials, it appears that the applicants have availed loan from the defendant bank by mortgaging their properties described in the securitization application. As per Annexures A14 and A14(a) possession notice was issued by the defendant bank on 30.09.2020. The properties described in the said notice in Item No.2 the survey number is described as 64/2 which is similar to the schedule mentioned in the SA. Merely because in the order passed by the CJM; the said item No.2 is shown as in survey No.664/2 in the item No.3 and the notice issued by the advocate commissioner it cannot be said that there is prima facie illegality or irregularity in the measures taken by the defendant. The same may be typographical mistake which is not fatal to the case. The contentions raised by the applicants relate to the merit of the case which would be considered at the time of hearing of the SA. Any opinion about the merit of the case at this stage it would cause prejudice to the either party. As the applicants failed to establish any prima facie illegality or irregularity in the SARFAESI measures; they do not deserve any indulgence from this Tribunal. Hence in the absence of prima case and keeping the quantum of outstanding due nearly Rs.7 Crores at present and the applicants having no interest to repay the same, I am not inclined to stay the step taken by the defendant for realization of the outstanding dues and taking possession of the secured asset. Hence the IA.No.2838/2022 filed by the applicants is hereby rejected. List the SA on 04.01.2023 for filing written statement by the defendant."

5. The learned counsel for the petitioners are *ad-idem* in contending that the impugned orders in each of these cases reveal non-application of mind and a total failure to consider the applications for interim relief on the basis of the well-settled

principles of **(i)** *strong prima facie case*; **(ii)** *balance of convenience* and **(iii)** *irreparable injury*. It is submitted that these principles must necessarily guide Courts/Tribunals in the matter of granting or refusing interim relief. It is submitted that the Securitisation Application before the Tribunal under Section 17 of the SARFAESI Act is in the nature of original proceedings. Reliance is placed in this regard on the judgment of the Supreme Court in ***Mardia Chemicals Ltd. v. Union of India***¹. It is submitted that despite several contentions on merits being taken, the Tribunal failed to consider the merits of the contentions. It is submitted that the jurisdiction of the Tribunal under Section 17 of the SARFAESI Act is limited to the examination of the question as to whether the bank had strictly followed the mandate of the law by initiating and continuing proceedings under the Act. It is submitted that when the jurisdiction of the Tribunal under Section 17 of the SARFAESI Act is in the manner indicated above, the Tribunal could not refuse to consider the contentions on merits. It is submitted that the jurisdiction vested with the Tribunal to grant interim relief is akin to that vested with the Civil Court under the Code of Civil Procedure and the principles that govern the grant of interim relief under the

1. ***(2004) 4 SCC 311***

Code are equally applicable to the proceedings before the Tribunal. Reliance is placed on the judgment of the Bombay High Court in ***Nimbus Communications Limited and Others v. Board of Control for Cricket in India and Another***², in support of this contention. It is submitted that the Tribunal has not considered the existence of any *prima facie* case, the balance of convenience or irreparable injury, which are the principles which govern the grant of interim relief. It is submitted that the Tribunal has failed to exercise its jurisdiction vested under Section 17 of the SARFAESI Act. It is submitted that since there is a failure to exercise jurisdiction, the petitioners have approached this Court under Article 226/227 of the Constitution of India. It is submitted that the alternative remedy of appeal to the Debts Recovery Appellate Tribunal is not an efficacious alternative remedy as the petitioner will be required to deposit a considerable amount as a pre-condition for maintaining the appeal. While the learned counsel for the petitioner in W.P(C) 31891 of 2022 would contend that the Tribunal has no power to impose any condition while granting a stay and the stay is automatic, the learned counsel appearing for the petitioners in the other cases would submit that while the Tribunal has got the power to impose

2. ***2013 1 MhLJ 39***

conditions for the grant of stay, the Tribunal has first to consider the case put forth in the Securitisation Application on merits to find out whether any *prima facie* case had been made out. It is submitted that the Tribunal has to apply the principles of balance of convenience and irreparable injury to determine whether a stay should be granted. It is submitted that the failure of the Tribunal to consider the merits of the contentions raised, at least for the purpose of determining whether any *prima facie* case had been made out, cannot be sustained in law. Reliance is placed on the judgment of a Division Bench of this Court in ***X v. Dr.S and Anr***³ to contend that sans reason, a judicial order will not pass the test of fairness and reasonableness. It is submitted that when the Tribunal fails to exercise its jurisdiction vested in it in a proper manner, it is open to this Court to interfere with such proceedings in the exercise of jurisdiction under Article 227 of the Constitution of India. It is submitted that Article 227 is a constitutional remedy which cannot be affected in any manner by any alternative remedy available to the petitioner under the statute. It is submitted that if the petitioners were required to make a deposit of 50% of the amount claimed by the bank as a condition for maintaining the appeal under Section 18

3. ***2020 KHC 719***

of the SARFAESI Act against an order which did not even consider any of the contentions raised on merits, the same would amount to travesty of justice and therefore, the petitioner is entitled to maintain this Original Petition under Article 227 of the Constitution of India. Reliance is placed on the judgment of this Court in ***Vinu Thomas v. South Indian Bank Ltd.***⁴ to contend that while this Court may, for good and sufficient reason, refuse to entertain a petition under Article 227 of the Constitution of India when an alternate remedy is available, it cannot be said that such a petition is not maintainable and there is a substantial difference between ‘*maintainability*’ and ‘*entertainability*’.

6. The learned counsel appearing for the petitioners in W.P (C) 31891 of 2022, while supporting the contentions taken on behalf of the petitioners in the connected cases, additionally contends that the moment a Securitisation Application is filed, the proceedings under the Act must automatically come to a stop, for it is only when the Tribunal gives its stamp of approval to the proceedings that it can go on. He submits with reference to the provisions of sub-section (3) and (4) of Section 17 that it is only after the Tribunal declares that the recourse taken by the secured creditor

4. **2023 (1) KLT 647**

under sub-section (4) of Section 13 is in accordance with the provisions of the Act and the Rules thereunder, can the secured creditor take recourse to the measures specified in sub-section (4) of Section 13. It is submitted that a combined reading of sub-section (3) and (4) of Section 17 indicates that, the moment a Securitisation Application is filed under Section 17 of the Act, there is an automatic stay of the proceedings. It is submitted that under sub-section (5) of Section 17, the Securitisation Application filed under Section 17 has to be disposed of within four months from the date of application. It is submitted that at least for the aforesaid period of four months, the proceedings initiated by the bank will have to be kept in abeyance. It is submitted with reference to sub-section (7) of Section 17 that the provisions of the Recovery of Debts and Bankruptcy Act, 1993 (the 'RDB Act') and the Rules made thereunder shall be applied to the adjudication of applications made under Section 17. It is submitted with reference to sub-section (25) of Section 19 of the RDB Act that the Debts Recovery Tribunal has got the inherent power to make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. It is submitted that sub-section (12) of

Section 19 of the RDB Act, which empowered the Tribunal to grant an interim order by way of injunction or stay or attachment against a defendant, has been expressly taken away by the amendment with effect from 04.11.2016. It is submitted that the finding in the judgment of the Supreme Court in ***Mardia Chemicals (supra)*** that the Tribunal will have the power under Section 17 to pass any stay or interim order subject to any condition that it may deem fit and proper to impose was rendered at a time when the provisions of sub-section (12) of Section 19 of the RDB Act were in force and therefore the said finding cannot be held to be the authority for the proposition that the Tribunal has the power (while considering a stay application in a proceeding under Section 17 of the SARFAESI Act) to grant a stay subject to condition. He submits that since the power to grant interim order by way of injunction, stay or attachment has been expressly taken away by amendment with effect from 04.11.2016, the Tribunal has to fall back upon the provisions of Sub Section (25) of Section 19 which refers to the inherent power of the Tribunal and therefore, a conditional order of stay cannot be granted. He submits that any order granting a stay subject to conditions will defeat the rights of the borrower. He submits that the

Supreme Court in ***Mardia Chemicals (supra)*** had struck down the condition for a deposit of 75% of the amount of debt as a condition for maintaining an application under Section 17 and therefore it would be inappropriate to hold that conditions can be imposed while granting an interim order in proceedings under Section 17 of the Act. The learned counsel refers to the judgment of the Supreme Court in ***Karnataka State Financial Corporation v. N Narasimahaiah and others***⁵, to contend that the right of property, although no longer a fundamental right, is still a constitutional right and a human right and in the absence of any provision either expressly or by necessary implication, depriving a person therefrom, the court shall not construe a provision leaning in favour of such deprivation.

7. The learned counsel appearing for the contesting respondents oppose the very maintainability of the petitions filed in this Court. They are unanimous in contending that these petitions are clearly not maintainable in the light of the principles laid down by the Hon'ble Supreme Court in ***Punjab National Bank v. O.C.***

5. (2008) 5 SCC 176

Krishnan and Others⁶ as well as in **Commissioner of Income Tax and Others v. Chhabil Dass Agarwal**⁷. It is submitted that the jurisdiction vested in this Court under Article 226/227 of the Constitution of India cannot be exercised in light of the alternative remedy available to the petitioner under Section 18 of the SARFAESI Act. It is submitted that in **Punjab National Bank (supra)**, there is a clear finding that the fast-track proceedings contemplated by the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 cannot be derailed by taking recourse to proceedings under Articles 226/227 of the Constitution of India. It is submitted that in **Chhabil Dass Agarwal (supra)**, the Supreme Court has clearly laid down the circumstances which would enable this Court to exercise jurisdiction notwithstanding the existence of alternative remedy. It is pointed out that no exceptional circumstances exist for this Court to exercise jurisdiction under Article 227 of the Constitution of India in the facts and circumstances of these cases. Reliance is placed on the judgment of the Supreme Court in **K. Sreedhar v. M/s. Raus Constructions Private Limited & Others**⁸ to contend that when there is an effective

6. (2001) 6 SCC 569

7. (2014) 1 SCC 603

8. 2023 KLT OnLine 1007 (SC): 2023 SCC OnLine SC 10

alternative remedy of appeal against the impugned orders, it is not open to the petitioner to approach this Court by filing a petition under Article 227 of the Constitution of India. It is also pointed out that since the liability is not disputed, it is open to the Tribunal to impose conditions while granting interim relief. It is submitted that every order passed by the Tribunal either granting or refusing interim relief, will be subjected to challenge under Article 226/227 of the Constitution of India, notwithstanding the alternative remedy available to the person aggrieved by such order if these petitions are entertained.

8. I have considered the submissions of the learned counsel on either side. I have also perused the pleadings as also the judgments cited by counsel before me. O.P (DRT) No. 360 of 2022, O.P (DRT) No. 438 of 2022 and O.P (DRT) No. 486 of 2022 have been filed invoking the jurisdiction of this Court under Article 227 of the Constitution of India and W.P (C) No. 31891 of 2022 has been filed under Article 226 of the Constitution of India. It is settled that the nomenclature under which a petition is filed is of no consequence. (See ***Divine Retreat Centre v. State of Kerala and others***⁹ and ***M/s. Pepsi Foods Ltd. and another v.***

9. (2008) 3 SCC 542

Special Judicial Magistrate and others¹⁰). I do not intend to examine the merits of the contentions taken by the respective petitioners before the Tribunal, and the only exercise being carried out is the examination of the question as to whether the Tribunal had exercised the jurisdiction vested in it under Section 17 of the Act in a proper manner. Assuming that there was a failure by the Tribunal to exercise a jurisdiction vested in it correctly, the examination of that question must be under Article 227 & not under Article 226 of the Constitution of India (see ***Radhey Shyam and another v. Chhabi Nath and others***¹¹). Therefore, I treat W.P (C) No. 31891 of 2022 as a petition filed under Article 227 of the Constitution of India.

Can the impugned orders of the Tribunal be questioned under Article 227 of the Constitution of India, and if so, should this Court refrain from exercising jurisdiction in the light of the fact that the petitioners have an alternate remedy of appeal before the Debts Recovery Appellate Tribunal ?

9. In ***Waryam Singh and another v. Amarnath and another***¹², a five judge bench of the Supreme Court held as

follows:-

10. (1998) 5 SCC 749

11. (2015) 5 SCC 423

12. AIR 1954 SC 215

“11. Learned advocate appearing in support of this appeal urges that the learned Judicial Commissioner acted wholly without jurisdiction inasmuch as (1) the Rent Controller or the District Judge exercising powers under the Act was not amenable to the jurisdiction of the High Court and, therefore, Article 227 confers no power on the Court of the Judicial Commissioner over the Rent Controller or the District Judge, and (2) that Article 227 read with Article 241 confers no power of judicial superintendence on the Court of the Judicial Commissioner.

Re. 1.— The Court of the Judicial Commissioner of Himachal Pradesh exercises jurisdiction in relation to the whole of the territories of Himachal Pradesh. The Rent Controller and the District Judge exercising jurisdiction under the Act are certainly tribunals, if not courts, and they function within the territories of Himachal Pradesh. Therefore, Article 227(1) read with Article 241 confers on the Court of the Judicial Commissioner power of superintendence over such tribunals. The words “in relation to which” obviously qualify the word “territories” and not the words “courts and tribunals”.

Re. 2.— The material part of Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915, except that the power of superintendence has been extended by the Article also to Tribunals. That the Rent Controller and the District Judge exercising jurisdiction under the Act are Tribunals cannot and has not been controverted. The only question raised is as to the nature of the power of superintendence conferred by the Article. Reference is made to clause (2) of the article in support of the contention that this article only confers on the High Court administrative superintendence over the subordinate courts and tribunals. We are unable to accept this contention because clause (2) is expressed to be without prejudice to the generality of the provisions in clause (1). Further, the preponderance of judicial opinion in India was that Section 107 which was similar in terms to Section 15 of the High Courts Act, 1861, gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Court. In this connection it has to be remembered that Section 107 of the Government of India Act, 1915, was reproduced in the Government of India Act, 1935, as Section 224. Section 224

*of the 1935 Act, however, introduced sub-section (2), which was new, providing that nothing in the section should be construed as giving the High Court any jurisdiction to question any judgment of any inferior court which was not otherwise subject to appeal or revision. The idea presumably was to nullify the effect of the decisions of the different High Courts referred to above. Section 224 of the 1935 Act has been reproduced with certain modifications in Article 227 of the Constitution. It is significant to note that sub-section (2) to Section 224 of the 1935 Act has been omitted from Article 227. This significant omission has been regarded by all High Courts in India before whom this question has arisen as having restored to the High Court the power of judicial superintendence it had under Section 15 of the High Courts Act, 1861, and Section 107 of the Government of India Act, 1915. See the cases referred to in *Moti Lal v. The State through Shrimati Sagrawati* [ILR (1952) 1 Allahabad 558 at p. 567]. Our attention has not been drawn to any case which has taken a different view and, as at present advised, we see no reason to take a different view.”*

The principles laid down in **Waryam Singh** have been consistently followed. The orders impugned in these petitions are orders of Debts Recovery Tribunal functioning within the territorial limits of this Court. While the power under Article 227 of the Constitution of India should never be exercised in a manner that would result in the petition being an appeal in disguise, this Court would be failing in its duty if it were to hold that it would not even examine the question as to whether Tribunal had failed to exercise a jurisdiction vested in it and such failure has occasioned the failure of justice. In the facts of these cases, and considering the nature of the orders issued by the Tribunal, I am convinced that there is an apparent failure by the

Tribunal to exercise a jurisdiction vested in it in a proper manner occasioning the failure of justice. In ***Vinu Thomas (supra)***, this Court was considering the question as to whether, in the facts and circumstances of that case, this Court should refuse relief on the ground that an alternate remedy was available under Section 18 of the SARFAESI Act and it was held:-

“5. The contention of the learned counsel for the respondent relying on the decision of the Supreme Court in Varimadugu Obi Reddy (supra), where the Court deprecated the practice of entertaining writ application by the High Court in the exercise of jurisdiction under Art.226 of the Constitution without exhausting the alternative statutory remedy available under the law, cannot be accepted. This is not a Writ Petition under Art.226 of the Constitution of India. It is a petition filed under Art.227 of the Constitution of India. In Raj Shri Agarwal @ Ram Shri Agarwal v. Sudheer Mohan, (2022 (5) KLT OnLine 1100 (SC) = 2022 (7) KHC 270 (SC)), the Supreme Court held as follows: -

“There is a difference and distinction between the entertainability and maintainability. The remedy under Article 227 of the Constitution of India available is a constitutional remedy under the Constitution of India which cannot be taken away. In a given case the Court may not exercise the power under Article 227 of the Constitution of India if the Court is of the opinion that the aggrieved party has another efficacious remedy available under the C.P.C. However, to say that the Writ Petition under Article 227 of the Constitution of India shall not be maintainable at all is not tenable.”

It is settled law that the power under Art.227 of the Constitution may be exercised when there is grave injustice or failure of justice and when “(i) the Court or the Tribunal has assumed a jurisdiction which it does not have (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice and (iii) the

jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction...” (See Raveendran Pilla P. & Ors. v. State of Kerala & Ors., (2020 (6) KLT 838 = 2021 (1) KHC 38) & Deepak v. Govardhanan Nair, (2021 (6) KLT 708). In Shiv Shankar Dal Mills v. State of Haryana & Ors. (1980 KLT OnLine 1016 (SC) = (1980) 2 SCC 437); Justice Krishna Iyer (speaking for the bench) famously held :- “Nor is it palatable to our jurisprudence to turn down the prayer for high prerogative writs, on the negative plea of “alternative remedy”, since the root principle of law married to justice, is ubi jus ibi remedium.” I, therefore, reject the respondent’s plea of an alternate remedy. I am convinced that Ext.P2 constitutes a failure on the part of the Tribunal to exercise a jurisdiction vested in it.”

Further, Section 18 of the SARFAESI Act provides that any appeal under that Section can be filed only if “*fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less*” is deposited before the Appellate Tribunal. Of course, the Appellate Tribunal has the discretion to reduce the amount to 25%. But that is no solace. In cases like these, where it has been clearly demonstrated that the Tribunal has failed to exercise a jurisdiction vested in it in a proper manner, it would be a negation of justice if the person aggrieved is required to challenge the order in an appeal under Section 18 of the Act. The decisions cited at the bar by the learned counsel appearing of the contesting respondents (banks/financial institutions) do not compel me to hold that this court should decline

the jurisdiction on the ground that there is an effective alternative remedy before the Appellate Tribunal. In ***Raus Constructions (supra)***, the facts of the case before the Hon'ble Supreme Court were that after the Securitisation Application filed by the borrower was dismissed by the Tribunal after adverting to the contentions taken before the Tribunal, (including the contention that the land in question was agricultural land) the borrower approached the High Court under Article 226 of the Constitution of India and the High Court had set aside the order of the Tribunal as if it were hearing an appeal against the order passed by the Tribunal. It was, in such circumstances that the Supreme Court held that when the remedy under Section 18 of the SARFAESI Act is available to the borrower, it would not be open to the borrower to bypass such remedy and approach the High Court under Article 226/227 of the Constitution of India. The judgments of the Hon'ble Supreme Court in ***Punjab National Bank (supra)*** and ***Chhabil Dass Agarwal (supra)*** also indicate that they were rendered in completely different factual circumstances. It is settled law that judgments of a court cannot be read like Euclid's theorems and each decision must therefore, be construed with reference to the facts of the particular case. I,

therefore, find that these petitions are maintainable under Article 227 of the Constitution of India in the facts and circumstances of these cases. I must, at this stage, clarify that wherever the Tribunal has considered the matter in its proper perspective and where the impugned orders show the application of mind by the Tribunal, this Court will not entertain a petition under Article 227 merely because another view could have been taken. In other words, errors within jurisdiction are not amenable to be corrected or interfered with under Article 227 of the Constitution of India.

Has the Tribunal exercised the jurisdiction vested in it in a proper manner, in the facts and circumstances of these cases?

10. The SARFAESI Act is a very harsh legislation¹³. I have held earlier in *Vinu Thomas (supra)* that under the provisions of the SARFAESI Act, the bank/financial institution is the claimant, the adjudicator and the executioner. Practically, the only remedy open to a person aggrieved by the proceedings initiated by the bank is to make an application to the Tribunal, having jurisdiction, under the provisions of Section 17 of the SARFAESI Act. Considering the drastic nature of the powers conferred on the banks/financial

13. See *Sami K v. Branch Manager, Bank of India & ors; 2011 (3) KLT 554*

institutions under the provisions of the SARFAESI Act, this Court must expect that the Tribunal will apply its mind to the contentions taken in the Securitisation Application and a decision on whether or not an interim stay should be granted will be taken on well-settled principles governing the grant of interim relief. The Supreme Court in ***Mardia Chemicals (supra)*** has held that proceedings under Section 17 of the Act, in fact, are not appellate proceedings. It has been held that an application under Section 17 is the initial action which is brought before a forum as prescribed under the Act, raising grievance against the action or measures taken by one of the parties to the contract and that the proceedings under Section 17 of the Act are in lieu of a civil suit. Therefore it was held that the requirement of pre-deposit of any amount at the first instance renders the remedy illusory and nugatory. Interestingly, it was also held in paragraph 62 as follows:-

“As indicated earlier, the position of the appeal under Section 17 of the Act is like that of a suit in the court of the first instance under the Code of Civil Procedure. No doubt, in suits also it is permissible, in given facts and circumstances and under the provisions of the law to attach the property before a decree is passed or to appoint a receiver and to make a provision by way of interim measure in respect of the property in suit. But for obtaining such orders a case for the same is to be made out in accordance with the relevant provisions under the law. There is no such provision under the Act.”

This finding of the Supreme Court, in my view, emphasises the fact that in the initial stage of proceedings under the SARFAESI Act, there is absolutely no adjudication. This view of the Supreme Court also makes it clear that when an application is brought before the Tribunal, under Section 17 of the Act, the Tribunal must be alive to the fact that the Bank/Financial Institution has initiated the proceedings without any adjudication and that the powers conferred under the Act are drastic and can have disastrous consequences for the borrower. This is all the more reason for the Tribunal to apply its mind with reference to the contentions taken before it (even at the interim stage) before deciding to grant or reject a prayer for interim relief.

11. The contentions taken by the petitioners in these cases before the Tribunal have been briefly noticed above. The orders issued by the Tribunal, to the extent they reflect a consideration of the matter have also been extracted. The interim orders issued by the Tribunal (DRT-I) and which are under challenge in O.P (DRT) No.360 of 2022, W.P (C) No. 31891/2022 and O.P (DRT) No. 438 of 2022 are identical in terms. To say the least, the orders are clearly

of the *'cut, copy, paste'* category and does not reflect any application of mind by the Tribunal. This is not palatable to our judicial ethos. The order impugned in O.P (DRT) No. 486 of 2022 also does not consider any contention taken except the contention that there was some mistake in the survey number of the property mentioned in the order of the Chief Judicial Magistrate / notice of the Advocate Commissioner. All the impugned orders record that the Tribunal is not entering into the merits of the matter at all. This is clearly a failure on the part of the Tribunal to exercise a jurisdiction vested in it.

12. The contention of the learned counsel for the petitioner in W.P.(C) 31891 of 2022 that there must be an automatic stay as soon as the application under Section 17 is filed is only to be rejected. The contention that after the deletion of sub-section (12) of Section 19 of the RDB Act (as applicable to proceedings before the Tribunal under the SARFAESI Act), which empowered the Tribunal to grant an interim order by way of injunction, stay or attachment against a defendant, the Tribunal has no power to grant a conditional interim order is clearly wrong. Even if the power to grant interim relief (in the place of an automatic stay) was traceable to sub-section (12) of

Section 19 of the RDB Act (as applicable to proceedings before the Tribunal under the SARFAESI Act) and that provision is no longer in the statute book, it is settled law that the Tribunal has the power to do everything which is incidental or ancillary for the proper exercise of jurisdiction vested in it. (See ***Vasakumar Pillai S.P. v. Motor Accident Claims Tribunal and others***¹⁴). Further Section 19(25) always empowers the Tribunal to pass appropriate interim orders. Moreover the judgment in ***Mardia Chemicals (supra)*** declares in no uncertain terms that the Tribunal has the power to grant conditional interim orders. Whether any amount is to be deposited or the extent of amount to be deposited will depend on the *prima facie* appreciation by the Tribunal on the merits of the contentions taken by both sides and on the application of the well settled principles governing the grant of interim relief namely **(i) strong prima facie case; (ii) balance of convenience; and (iii) irreparable injury.** While it may not be necessary to the Tribunal to write a detailed order touching upon merits of each and every contention taken before the Tribunal as well as the response by the banks/financial institutions to such contentions, the order of the Tribunal must, on a reading, indicate that it was alive to the

14. **2008 (4) KLT 899**

contentions raised in the Securitisation Application. While considering the challenge to an order of assessment under the Kerala Value Added Tax Act, a Division Bench of this Court in ***Prodair Air Products India Pvt. Ltd. v. State of Kerala***¹⁵ held:-

“12. The need for upholding the rule of law would also mandate that the high court decide the matter in situations where the exercise of statutory power does not conform, inter alia, to the requirements of fairness, non-arbitrariness and reasonableness and therefore falls foul of the culture of justification that is seen as a necessary and essential feature of administrative decision making¹⁶. The said feature requires the decision of the administrative authority to demonstrate responsiveness, justification and demonstrated expertise. Responsiveness refers to the requirement that the reasons given by the decision maker must respond to the central issues and concerns raised by the parties by 'listening' rather than merely 'hearing' the parties. Justification refers to the principle that the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it. Demonstrated expertise refers to the requirement of the decision maker establishing the reasonableness of his decision by demonstrating therein his experience and expertise. Added to the above is the requirement of a reviewing court to understand the contextual constraints, if any, under which the decision under review was rendered by the administrative authority while assessing its reasonableness.¹⁷”

While the above observations were in relation to the legality of an order of assessment under the provisions of the KVAT Act (assessment proceedings under a taxing statute are quasi-judicial

15. **2023 (3) KLT 234**

16. ***Akshay N. Patel v. RBI; (2022) 3 SCC 694***

17. Paul Daly, 'Vavilov and the Culture of Justification in Administrative Law'-

<https://www.administrativelawmatters.com/blog/2020/04/20/vavilov-and-the-culture-of-justification-in-administrative-law>

proceedings) , I see no reason why those principles must not extend to statutory tribunals as well. The provisions of the RDB Act read with provisions of the Tribunals Reforms Act, 2021 and the Tribunal (Conditions of Service) Rules, 2021 make it clear that it must be manned by a person who “*is, or has been, a District Judge*”. The orders issued by the Tribunal must therefore demonstrate reasonableness of its decision by demonstrating therein its experience and expertise as held in ***Prodair Air Products (supra)***. Further a judicial order sans reason does not pass the test of fairness and reasonableness as held in ***X v. Dr.S & anr (supra)***.

13. For all these reasons, I am convinced that the petitioners are entitled to succeed. These petitions are therefore allowed in the following manner:-

(i) Ext.P12 order in O.P (DRT) No. 360 of 2022 is quashed. I.A No.1261 of 2022 in S.A No. 315 of 2022 will stand restored to the file of the DRT-I, Ernakulam. The Tribunal shall re-consider I.A No.1261 of 2022 in S.A No. 315 of 2022 afresh, and in accordance with the law and after affording an opportunity of hearing to the parties. *Status quo*

as on today shall be maintained till fresh orders are passed as directed above. The tribunal shall endeavor to pass fresh orders after adverting to the contentions taken and having regard to the observations in this judgment, within a period of two months from the date of receipt of a certified copy of this Judgment.

(ii) Ext.P6 order in W.P (C) No. 31891 of 2022 is quashed. I.A No.868 of 2022 in S.A No.224 of 2021 will stand restored to the file of the DRT-I, Ernakulam. The Tribunal shall reconsider I.A No.868 of 2022 in S.A No.224 of 2021 afresh, and in accordance with the law and after affording an opportunity of hearing to the parties. *Status quo* as on today shall be maintained till fresh orders are passed as directed above. The tribunal shall endeavor to pass fresh orders after adverting to the contentions taken and having regard to the observations in this judgment, within a period of two months from the date of receipt of a certified copy of this Judgment.

(iii) Ext.P2 order in O.P (DRT) No. 438 of 2022 is quashed. I.A No.1671 of 2022 in S.A No.79 of 2022 will stand restored to the file of the DRT-I, Ernakulam. The Tribunal shall re-consider I.A No.1671 of 2022 in S.A No.79 of 2022 afresh, and in accordance with the law and after affording an opportunity of hearing to the parties. *Status quo* as on today shall be maintained till fresh orders are passed as directed above. The tribunal shall endeavor to pass fresh orders after adverting to the contentions taken and having regard to the observations in this judgment, within a period of two months from the date of receipt of a certified copy of this Judgment.

(iv) Ext.P18 order in O.P (DRT) No. 486 of 2022 is quashed. I.A No.2838 of 2022 in S.A No.536 of 2022 will stand restored to the file of the DRT-II, Ernakulam. The Tribunal shall re-consider I.A No.2838 of 2022 in S.A No.536 of 2022 afresh, and in accordance with the law and after affording an opportunity of hearing to the parties. *Status quo* as on today shall be maintained till fresh orders are passed as directed above. The tribunal shall endeavor to pass fresh orders after

adverting to the contentions taken and having regard to the observations in this judgment, within a period of two months from the date of receipt of a certified copy of this Judgment.

I make it clear that I have not expressed any opinion on the merits of the contentions taken before the Tribunal by the parties.

Sd/-

GOPINATH.P
JUDGE

acd/AMG

APPENDIX OF OP (DRT) 360/2022

PETITIONER EXHIBITS

- EXHIBIT.P1 TRUE COPY OF THE NOTICE DATED 05/11/2019 PURPORTEDLY ISSUED UNDER SECTION 13(2) OF THE SARFAESI ACT.
- EXHIBIT.P2 TRUE COPY OF THE REPRESENTATION DATED 01/01/2022 SENT BY THE PETITIONER TO THE RESPONDENT BANK.
- EXHIBIT.P3 TRUE COPY OF THE REPLAY TO EXHIBIT.P2 REPRESENTATION SENT BY THE RESPONDENT DATED 08/01/2020.
- EXHIBIT.P4 TRUE COPY OF THE NOTICE RECIEVED FROM SAMEERA PUPORTEDLY SERVED TO HER BY ADVOCATE COMMISSIONER MS.SREETHU.K ON 24/04/2022.
- EXHIBIT.P5 TRUE COPY OF THE STATEMENT OF ACCOUNT OF THE PETITIONER"S FOR RELEVANT PERIOD.
- EXHIBIT.P6 TRUE COPY OF THE RELEVANT CIRCULAR OF RBI ON ASSEEST CLASIFICATION.
- EXHIBIT.P.7 TRUE COPY OF THE SEARCH REPORT ISSUED BY THE CERSAI (THE CENTRAL REGISTRY) SHOWING THE REGISTRATION.
- EXHIBIT.P.8. TRUE COPY OF THE AFFIDAVIT FILED BY THE AUTHORISED OFFICER OF THE RESPONDENT BANK BEFORE THE HONOURABLE CHIEF JUDICIAL MAGISTRATE, THALASSERY.UNDER SECTION 14.
- EXHIBIT.P.9. TRUE COPY OF THE SECURTISATION APPLICATION NO.315/2022 FILED BEFORE THE DRT-1, ERNAKULAM, WITHUOT ANNEXURES.
- EXHIBIT.P.10. TRUE COPY OF THE INTERIM APPLICATION NO.1261/2022 IN SECURITISATION APPLICATION NO.315/2022 FILED BEFORE THE DRT-1, ERNAKULAM.
- EXHIBIT.P.11. TRUE COPY OF THE COUNTER FILED BY THE RESPONDENT BANK TO EXHIBIT.P.10 INTERLOCUTORY APPLICATION.
- EXHIBIT.P.12. TRUE COPY OF THE ORDER 19/07/2022 ISSUED BY THE HONOURABLE DRT-1 ERNAKULAM IN I.A. 1261/2022 IN S.A. 315/2022.

APPENDIX OF WP(C) 31891/2022

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF SA 224/2021 IN DRT-1 ERNAKULAM.
- Exhibit P2 TRUE COPY OF THE INTERIM ORDER DATED 5.1.2022 IN OP (DRT) 1/2022 DRT-1 ERNAKULAM
- Exhibit P3 TRUE COPY THE JUDGMENT DATED 23.3.2022 IN OP DRT 1/2022 DRT-1 ERNAKULAM.
- Exhibit P4 TRUE COPY OF AMENDED SA 224/2021 IN DRT-I ERNAKULAM.
- Exhibit P5 THE TRUE COPY OF IA 868/2022 IN SA 224/2021 IN DRT-1 ERNAKULAM
- Exhibit P6 TRUE COPY OF ORDER DATED 7.7.2022 IN IA 868/2022 IN SA 224/2021 IN DRT-I ERNAKULAM.
- Exhibit P7 THE TRUE COPY OF THE REVIEW PETITION 2/2022 IN SA 224/2021 DRT-I ERNAKULAM.
- Exhibit P8 THE TRUE COPY OF IA 954/2022 FOR AMENDMENT IN SA 224/2021 DRT-I ERNAKULAM.
- Exhibit P9 THE TRUE COPY OF THE IA 955/2022 FOR STAY IN SA 224/2021 IN DRT-I ERNAKULAM.
- Exhibit P10 THE TRUE COPY OF THE PETITION FOR DIRECTION DATED 14.09.2022 IN SA 224/2021 IN DRT-I ERNAKULAM.
- Exhibit P11 THE TRUE COPY OF THE INTERIM REPORT DATED 27.8.2022 FILED BY THE ADVOCATE COMMISSIONER IN MC 451/2022 BEFORE THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT (MP & MLA)ERNAKULAM.
- Exhibit P12 THE TRUE COPY OF THE MC 451/2021 IN THE FILE OF ACJM (MP & MLA) COURT ERNAKULAM.
- Exhibit P13 THE TRUE COPY OF THE CENTRAL REGISTRY REPORT AND INPUT DETAILS DOWNLOADED BY THE PETITIONERS IN RESPECT OF THE ITEM NO.1 SCHEDULED IN MC 451/2021 OF ACJM (MP & MLA) COURT ERNAKULAM.

- Exhibit P14 THE TRUE COPY OF THE CENTRAL REGISTRY REPORT AND INPUT DETAILS DOWNLOADED BY THE PETITIONERS IN RESPECT OF THE ITEM NO.2 SCHEDULED IN MC 451/2021 OF ACJM (MP & MLA) COURT ERNAKULAM
- Exhibit P15 THE TRUE COPY OF THE CENTRAL REGISTRY REPORT AND INPUT DETAILS DOWNLOADED BY THE PETITIONERS IN RESPECT OF THE ITEM NO.3 SCHEDULED IN MC 451/2021 OF ACJM (MP & MLA) COURT ERNAKULAM.
- Exhibit P16 THE TRUE COPY OF THE AFFIDAVIT DATED 22.09.2022 FILED BY THE PETITIONERS IN SA 224/2021 BEFORE THE 2ND RESPONDENT
- Exhibit P17 THE TRUE COPY OF THE ORDER DATED 3.10.2022 IN RP 2/2022 IN SA 224/2021 BEFORE THE 2ND RESPONDENT
- Exhibit P18 THE TRUE COPY OF THE PETITION FOR AMENDMENT DATED 2.10.2022 (WITHOUT ANNEXURES) FILED IN SA 224/2021
- Exhibit P19 THE TRUE COPY OF THE CONTEMPT NOTICE DATED 21.9.2022 ISSUED TO THE 4TH RESPONDENT IN RESPECT OF THE PROPERTIES IN MC 20/2022 IN THE FILE OF THE CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM.
- Exhibit P20 THE TRUE COPY OF THE POSSESSION NOTICE DATED 14.09.2022 ISSUED BY THE 4TH RESPONDENT

APPENDIX OF OP (DRT) 486/2022

PETITIONER EXHIBITS

- EXHIBIT.P1. TRUE COPY OF THE NOTICE DATED 27/09/2022 ISSUED BY THE ADV. PRIYANKA P.B, TO THE 1ST AND 2ND PETITIONERS.
- EXHIBIT. P2. TRUE COPY OF PETITION FILED BY RESPONDENT UNDER SECTION 14 BEFORE CJM THRISSUR DATED NIL
- EXHIBIT.P3. TRUE COPY OF THE SEARCH REPORT DATED 29/08/2022 ISSUED BY THE CERSAI PRODUCED BY THE RESPONDENT BEFORE THE CJM COURT SHOWING THE DATE OF REGISTRATION OF SECURITY INTEREST.
- EXHIBIT.P4, TRUE COPY OF THE CONFIRMATION OF MEMORANDUM OF DEPOSIT OF TITTLE DEEDS DATWD 15/12/2015 BY THE 2ND PETITIONER
- EXHIBIT.P5. TRUE COPY OF THE ASSIGNMENT DEED 236/05 OF SRO WADAKKANCHERY.
- EXHIBIT.P6. TRUE COPY OF THE ORDERS DATED 01/09/2022 PASSEDS BY CJM, THRISSUR IN CR.M.M. 354/22
- EXHIBIT.P7. TRUE COPY OF THE TITLE DEED NO.399/1/2015 OF SRO SRO CHAVAKKAD DATED 23/02/2015 SHOWING THE SY. NO. OF THE PROPERTY BELONGING TO PETITIONERS 3 AND 4
- EXHIBIT.P8. TRUE COPY OF THE PASSPORT OF THE SON OF THE SECOND PETITIONER SHOWING THAT HE WAS NOT IN INDIA ON THE DATE WHEN THE NOTICE IS CLAIMED TO BE SERVED.
- EXHIBIT.P9. TRUE COPY OF THE NOTICE DATED 13/02/2020 CLAIMED TO HAVE BEEN SERVED ON PETITIONERS.
- EXHIBIT.P10. TRUE COPY OF THE RESPONSE DATED 05/03/2020 SUBMITTED ALONG WITH A TRUE COPY OF THE POSTAL RECEIPT EVIDENCING DISPATCH.
- EXHIBIT.P11. TRUE COPY OF 1ST MEMORANDUM OF EXTENSION OF EQUITQBLE MORTGAGE DATED 15/12/2015 PRODUCED BY THE RESPONDENT BANK BEFORE THE

CJM COURT , THJRISSUR.

- EXHIBIT.P12. TRUE COPY OF 2ND MEMORANDUM OF EXTENSION OF
EQUITQBLE MORTGAGE DATED 15/12/2015
PRODUCED BY THE RESPONDENT BANK BEFORE THE
CJM COURT , THJRISSUR.
- EXHIBIT.P13. TRUE COPY OF THE AFFIDAVIT FILED IN SUPPORT
OF EXHIBIT.P2 DATED NIL FILED BEFORE THE
CJM COURT , THRISSUR.
- EXHIBIT.P14. TRUE COPY OF THE NOTICE DATED
14/10/2020.ISSUED UNDER SECTION 13(4)
SARFAESI ACT.
- EXHIBIT.P15. TRUE COPY OF THE SECURITISATION APPLICATION
NO.536/2022 PENDING BEFORE HONOURABLE DRT-
II , ERNAKULAM. WITHOUT ANNEXURES.
- EXHIBIT.16. TRUE COPY OF THE APPLICATION FOR INTERIM
STAY NUMBERED AS IA 2838/2022 IN S.A
536/2022.
- EXHIBIT.P17. TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY
RESPONDENT BANK IN I.A2838/2022 IN S.A
536/2022.
- EXHIBIT.P18. TRUE COPY OF THE ORDER DATED 21/11/2022 OF
HONOURABLE DRT.II , ERNAKULAM IN I.A
2838/2022 IN S.A.536/2022.

APPENDIX OF OP (DRT) 438/2022

PETITIONER EXHIBITS

- Exhibit-P1 TRUE COPY OF RELEVANT PAGES OF SA
NO.79/2022 DATED 17/02/2022 FILED BY THE
PETITIONER BEFORE THE DEBT RECOVERY
TRIBUNAL-I ERNAKULAM.
- Exhibit-P2 TRUE COPY OF THE ORDER OF DEBT RECOVERY
TRIBUNAL-I ERNAKULAM IN IA NO.1671/2022 IN
SA NO.79 /2022 DATED 18-8-2022
- Exhibit-P3 TRUE COPY OF THE PHOTOGRAPHS OF THE
PROPERTY OF THE PETITIONER