

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 7TH DAY OF APRIL 2022 / 17TH CHAITHRA, 1944

WA NO. 408 OF 2022

AGAINST THE JUDGMENT DATED 17.03.2022 IN WP(C) 7753/2022

OF HIGH COURT OF KERALA

APPELLANT/3rd RESPONDENT:

CHENGALAM SERVICE CO-OPERATIVE BANK LTD.
NO.K 253,
CHENGALAM-PAIKA ROAD, CHENGALAM P.O.,
KOTTAYAM DISTRICT-686 585.

BY ADVS.

SHRI.GRASHIOUS KURIAKOSE SR.
SHRI.SHAJI THOMAS
SHRI.JEN JAISON

RESPONDENTS/PETITIONERS & RESPONDENTS 1 & 2:

- 1 RAJKUMAR,
AGED 28 YEARS,
S/O. ASHOKAN, KATTILPARAMBIL (H) ,
CHENGALAM EAST VILLAGE,
KOTTAYAM DISTRICT-686585.
- 2 MERCY KURIAN,
AGED 50 YEARS,
W/O. KURIAN, NJARALANGAT (H) ,
CHENGALAM EAST VILLAGE,
KOTTAYAM DISTRICT-686 585.
- 3 MOLY JOSE,
W/O. JOSE ANTONY, MAPPILATHAZHE (H) ,
CHENGALAM EAST VILLAGE,
KOTTAYAM DISTRICT-686 585.

- 4 ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL) ,
COLLECTORATE P.O. ,
KOTTAYAM DISTRICT-686001.
- 5 SPECIAL SALE OFFICER,
AKALAKKUNNAM VILLAGE SCB GROUP, ASSISTANT
REGISTRAR OFFICE (G) , COLLECTORATE P.O. ,
KOTTAYAM DISTRICT-686001.

BY ADVS.

SHRI.I.DINESH MENON FOR R1 to R3

OTHERS PRESENT

SENIOR GOVERNMENT PLEADER SHRI.V.K.SUNIL

THIS WRIT APPEAL HAVING COME UP FOR HEARING ON
07.04.2022, ALONG WITH WA.419/2022, 410/2022, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 7TH DAY OF APRIL 2022 / 17TH CHAITHRA, 1944

WA NO. 410 OF 2022

AGAINST THE JUDGMENT DATED 17.03.2022 IN
WP(C)No.7876/2022 OF HIGH COURT OF KERALA

APPELLANT/3rd RESPONDENT:

CHENGALAM SERVICE CO-OPERATIVE BANK LTD.
NO. K 253,
CHENGALAM-PAIKA ROAD, CHENGALAM,
KOTTAYAM DISTRICT - 686585.

BY ADVS.
SHRI.GRASHIOUS KURIAKOSE SR.
SHAJI THOMAS
JEN JAISON

RESPONDENTS/PETITIONERS 1 TO 3 & RESPONDENTS 1 & 2:

- 1 JOSE ANTONY,
AGED 60 YEARS,
S/O. LATE ANTONY, MAPPILATHAZHE HOUSE,
CHENGALAM EAST VILLAGE,
KOTTAYAM DISTRICT - 686585.
- 2 ANJU JOSE,
D/O. JOSE ANTONY, MAPPILATHAZHE (H),
CHENGALAM EAST VILLAGE,
KOTTAYAM DISTRICT - 686585.

- 3 ANIT JOSE,
D/O. JOSE ANTONY, MAPPILATHAZHE (H) ,
CHENGALAM EAST VILLAGE,
KOTTAYAM DISTRICT - 686585.
- 4 ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL) ,
KOTTAYAM DISTRICT - 686001.
- 5 SPECIAL SALE OFFICER,
AKALAKKUNNAM VILLAGE SCB GROUP,
ASSISTANT REGISTRAR OFFICE (G) ,
KOTTAYAM DISTRICT - 686001.

BY ADVS.

SHRI.I.DINESH MENON R1 TO R3

OTHERS PRESENT

SENIOR GOVERNMENT PLEADER SHRI.V.K.SUNIL

THIS WRIT APPEAL HAVING COME UP FOR HEARING ON
07.04.2022, ALONG WITH WA.408/2022 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 P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 7TH DAY OF APRIL 2022 / 17TH CHAITHRA, 1944

WA NO. 419 OF 2022

AGAINST THE ORDER/JUDGMENT DATED 17.03.2022 IN

WP(C) 7854/2022 OF HIGH COURT OF KERALA

APPELLANT/3rd RESPONDENT:

CHENGALAM SERVICE CO-OPERATIVE BANK LTD NO.
K.253,
CHENGALAM- PAIKA ROAD, CHENGALAM,
KOTTAYAM DISTRICT - 686 585.

BY ADVS.
SHRI.GRASHIOUS KURIAKOSE SR.
SHAJI THOMAS
JEN JAISON

RESPONDENTS/PETITIONER & RESPONDENTS 1 & 2:

- 1 MOLY JOSE,
W/O.JOSE ANTONY, MAPPILATHAZHE (H),
CHENGALAM EAST VILLAGE,
KOTTAYAM DISTRICT - 686 585.
- 2 ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL),
COLLECTORATE P.O.,
KOTTAYAM DISTRICT - 686 002.

3 SPECIAL SALE OFFICER,
AKALAKKUNNAM VILLAGE SCB GROUP, ASSISTANT
REGISTRAR OFFICE (G), COLLECTORATE P.O.,
KOTTAYAM DISTRICT - 686 002.

BY ADVS.
SHRI.I.DINESH MENON

OTHERS PRESENT

SENIOR GOVERNMENT PLEADER SHRI.V.K.SUNIL

THIS WRIT APPEAL HAVING COME UP FOR HEARING ON
07.04.2022, ALONG WITH WA.408/2022 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R. “

P.B. SURESH KUMAR & C.S. SUDHA, JJ.

W.A. No.408 of 2022, W.A. No.410 of 2022
&
W.A. No.419 of 2022

Dated this the 7th day of April, 2022

JUDGMENT

C.S. Sudha, J.

This case appears to be a classic example of the ‘fence eating the crop’. Now the question is, should this Court invoke its discretionary extra-ordinary jurisdiction under Article 226 of the Constitution to grant relief to such a person, who is supposed to have drained the appellant-Chengalam Service Co-operative Bank (the Bank) of its resources by availing loans one after the other, to be specific 16 loans, in his own name and in the name of the members of his family, relatives and close aides and thereafter defaulted payment resulting in a liability of about two and odd crores of rupee, due to the appellant-Bank. This act of one individual, submits the learned senior counsel for the Bank, has landed the Bank in a precarious financial situation, on the brink of financial bankruptcy, due to which the Bank is unable to even return the deposits of its customers due

to paucity of funds. The protagonist of this story, responsible for the sorry state of affairs of the Bank is stated to be Jose Antony, the former President of the Bank, who was at the helm of affairs of the Bank for 15 long years. Do we need to invoke our extra ordinary discretionary jurisdiction under Article 226 in such circumstances is the question that begs an answer in this series of appeals.

2. These appeals are against the judgments dated 17.03.2022 in Writ Petitions (C) Nos.7753/2022, 7876/2022 and 7854/2022 respectively. Jose Antony and his daughters, Anju Jose and Anit Jose are the petitioners in Writ Petition (C)No.7876/2022. His wife Moly Jose is the sole petitioner in Writ Petition (C)No.7854/2022. Moly Jose is the 3rd petitioner in Writ Petition (C)No.7753/2022, apart from the 1st and 2nd petitioners, who are stated to be the loyal close aides of Jose Antony. The Assistant Registrar of Co-operative Societies (General), Collectorate P.O., Kottayam; Special Sale Officer, Akalakkunnam Village SCB Group, Assistant Registrar Office (G), Collectorate P.O., Kottayam and Chengalam Service C-operative Bank Ltd. are the respondents in the writ petitions. The 3rd respondent in the writ petitions, namely, the Chengalam

Service C-operative Bank (the Bank) is the appellant in all the 3 appeals. The parties in the appeals will be referred to as described in the writ petitions.

3. **W.A. No.408 of 2022**

The 3rd respondent in Writ Petition (C) No.7753/2022 is the sole appellant herein. The three petitioners in the writ petition are respondents 1 to 3 herein. Respondents 1 and 2 in the writ petition are the fourth and the fifth respondents herein.

3.1 In the writ petition, the petitioners allege that they had availed loans from the third respondent-the Bank, by offering 99.9 cents of property as security. Due to the onset of Covid pandemic, they were unable to make prompt repayments. As on date, the balance amount outstanding is not substantial. Hence, if a breathing time is given, the petitioners will clear the outstanding liability. The petitioners have not received any notice from the Bank calling upon them to make any payments. They were taken aback on receipt of a notice from the second respondent to the effect that the property given as security for the loan transactions would be proceeded against for realization of the defaulted

amounts. The petitioners, on enquiry, have come to know that the third respondent had initiated arbitration proceedings for realization of the amounts due from the petitioners resulting in Exts.P1 to P3 *ex parte* awards dated 27/12/2019 in ARC 161/2019; ARC 185/2019 and ARC 221/2019 respectively. The petitioners never received any notice in the arbitration proceedings. It is only when they received Exts.P4 to P6 notice dated 19/02/2022 intimating them that their property would be proceeded against, they have come to know of the awards passed against them. There has not been proper accounting of the amounts remitted by the petitioners. The exact amounts to be repaid by the petitioners can be decided only after proper credit is given to the payments effected by them. As the petitioners were set *ex parte*, these aspects could not be brought to the notice of the Arbitrator resulting in Exts.P1 to P3 *ex parte* awards being passed against them. The petitioners have filed Exts.P7 to P9 applications dated 02/03/2022 for setting aside the *ex parte* awards. These petitions are to be considered and further coercive steps deferred till such time, failing which the petitioners would be put to serious prejudice and hardship. As the petitioners are left with no other

efficacious and alternative remedy of speedy nature, the writ petition is being filed praying for a writ of mandamus directing the second respondent to forthwith consider and pass orders on Exts.P7 to P9 applications filed seeking setting aside of Exts.P1 to P3 *ex parte* awards.

4. The third respondent-Bank entered appearance and filed counter contending as follows- The husband of the third petitioner, namely, Jose Antony, was the President of the third respondent-Bank for a continuous period of 15 years until he was disqualified from contesting the election. He has availed several loans in the name of his wife, daughters, close aides and his close aides by pledging two properties, one standing in his name and the other in the name of his wife, the third petitioner herein. The petitioners have taken three loans, that is, a loan of ₹ 25 lakhs each by the first and the second petitioners and the 3rd one for an amount of ₹ 3 lakhs by the third petitioner. All these loans were availed by pledging a property owned by the 3rd petitioner. The first and the second petitioners are the loyal close aides of Jose Antony. The loans of ₹ 25 lakhs each was availed on 25.05.2016. Anit Jose, the daughter of the third petitioner, availed a loan of ₹ 3 lakhs on 25.03.2013, which is

the subject matter of Ext.P3 award. In fact, all these loans have been availed by Jose Antony. While he was the President of the third respondent-Bank, several loans were availed by him in the name of different persons because as per the by-law of the Bank, a member cannot take a loan of more than ₹ 25 lakhs by pledging a property. Hence, to circumvent the same, he has taken loans in the name of various other persons mortgaging his property and the property in the name of his wife, which are totally insufficient securities for the loan amounts obtained.

4.1 Petitioners 1 and 2 herein, are persons without any means to repay the loan. After availing the loans, no amount whatsoever has been repaid. In such circumstances, arbitration proceedings were initiated and though notice was served on the petitioners, they did not enter appearance or contest the proceedings resulting in *ex parte* awards being passed against them. The allegation that they were unable to repay the amount due the onset of Covid pandemic is false and incorrect. The default is nothing but wilful non-repayment of the loan, which is evident from the fact that not even a single penny has been repaid. The allegation that the petitioners never received any notice in the ARC proceedings filed in

January 2019 is incorrect and false. Till date no application has been filed by the petitioners for setting aside the *ex parte* awards that have been passed against them.

4.2 The audit report for the year 2016-2017 and the reports of the years thereafter clearly refer to the illegal and wrongful act of the President of the Bank in availing loans in the name of his wife, daughter, close aides and other close friends. Some members of the third respondent-Bank had filed a complaint before the Joint Registrar of Co-operative Societies regarding the corrupt practices of the President of the Bank. The Joint Registrar, Kottayam by order dated 17.12.2018 had directed the Unit Inspector, Pampadi to conduct an enquiry under Section 66(1) of the Co-operative Societies Act (the Act) relating to the functioning of the Bank. The enquiry officer after conducting an enquiry has filed a report in which there are clear findings regarding the illegal acts of the President. The third respondent-Bank takes loans from the District Co-operative Bank (the Kerala Bank) and then distributes the same to the customers at a margin of about 2%. Apart from this, the bank also grants loans out of its own funds. The third respondent-Bank is now

running at a loss and it is also finding it difficult to refund the deposits of its customers due to paucity of funds. If only the property given as security by the petitioners is sold and the money realized, can the third respondent refund the deposits to its customers. Even if the property pledged by the petitioners is sold, still the amounts due from the petitioners cannot be fully realised. The petitioners after staying away from the arbitration proceedings deliberately and wilfully, have now come up with false and untenable grounds. The writ petition is only a tactic adopted to protract the sale proceedings initiated and hence the writ petition is liable to be dismissed with exemplary costs.

5. **W.A.No.410 of 2022**

The 3rd respondent in Writ Petition (C) No.7876/2022 is the sole appellant herein. The petitioners in the writ petition are respondents 1 to 3 herein. Respondents 1 and 2 in the writ petition are the fourth and the fifth respondents herein.

5.1 The allegations in the writ petition are - petitioners 2 and 3 are daughters of Jose Antony, the first petitioner. Petitioners 2 and 3 have availed loans from the third respondent- Bank, in which transactions the

first petitioner is the surety. An extent of 96.79 cents of property was offered as security for the loans. The petitioners defaulted repayment of the loans due to the onset of COVID pandemic. The remaining allegations are the same as in the earlier writ petition and hence they are not repeated.

6. The third respondent-Bank entered appearance and filed counter denying the allegations in the writ petition. The third petitioner is now permanently residing in Qatar. Hence it is highly doubtful as to who has signed her vakalath and affidavit. The 1st petitioner was the President of the Bank during the period 2004 till 2019. Misusing and abusing his position, he has availed several loans. Two loans for a sum of ₹ 25 lakhs and ₹ 5 lakhs were availed in the name of the 2nd petitioner on 25/05/2016 and 10/08/2016 respectively, which is the subject matter in Exts. P1 and P2 awards. A loan of ₹ 25 lakhs was availed on 25/05/2016 in the name of the 3rd petitioner, which is the subject matter in Ext. P3 award. For all these loans, the 1st petitioner is the surety. The property offered as security is 96.79 cents of the 1st petitioner. In fact, all these loans have been availed by the 1st petitioner himself. Till date no amount has been

repaid. The remaining contentions are the same as stated in the counter to the earlier writ petition.

7. W.A. No.419 of 2022

The 3rd respondent in Writ Petition (C) No.7854/2022 is the sole appellant herein. Moly Jose, the sole petitioner in the writ petition is the 1st respondent herein and respondents 1 and 2 in the writ petition are the 2nd and 3rd respondents herein.

7.1 The petitioner has availed a loan from the third respondent-Bank by pledging an extent of 99.9 cents of her property as security. Due to Covid pandemic situation, there has been some default in the payment of the loan instalments. The remaining allegations are the same as in the earlier writ petition.

8. The third respondent- Bank entered appearance and filed counter disputing the allegations in the writ petition. The petitioner after availing a loan of ₹ 25 lakhs on 25/05/2016, has not paid a single instalment. An amount of ₹ 3 lakhs was availed on 25/03/2013. Interest for this loan has been paid till 31/03/2018. Default in the repayment of the loans led to Exts. P1 and P2 awards in ARC 186/2019 and ARC

222/2019. The petitioner and her husband have taken several loans amounting to ₹ 2,08,00,000/-. Thereafter they have not repaid a single penny. The remaining contentions are the same as raised in the earlier writ petition.

9. In W.A.No.408/2022 the appellant-Bank has produced Annexures A1 to A3 which are the copy of the summons in ARC No.161/2019; ARC No.185/2019 and ARC No.221/2019 respectively. In W.A.No.410/2022, Annexures A1 to A3 produced are the copy of the summons in ARC No.184/2019; ARC No.214/2019 and ARC No.183/2019. In W.A. No.419/2022 Annexures A1 and A2 produced are the copy of the summons in ARC No.222/2019 and ARC No.186/2019. According to the Bank, all the summons has been received by Jose Antony on his own behalf and on behalf of the other defaulters.

10. The learned Single Judge by way of the impugned judgments allowed the writ petitions. The operative part of the judgment in W.P. (C) no. 7753/2022 reads-

“Resultantly and taking note of the afore submissions, I order this writ petition and direct the 1st respondent – Assistant Registrar of Co-operative Societies (General), to take up Exts.P7 to P9

applications and dispose them of, after affording an opportunity of being heard to the petitioners, as also to the 3rd respondent Bank; thus culminating in appropriate orders and necessary action thereon, as expeditiously as is possible, but not later than one month from the date of receipt of a copy of this judgment.

I make it clear that I have not considered the contentions of the third respondent, that Exts.P7 to P9 applications are not maintainable and this aspect is left to be considered and decided by the 1st respondent in terms of law. “

Similar directions have been given in the other two writ petitions also.

Aggrieved, the third respondent- Bank has come up with appeal.

11. In the appeal memorandums, it is alleged that the writ petitions have been filed raising false and untenable contentions. All the statements made in the writ petitions are false. The writ petitions are nothing but an abuse of the process of the court and an attempt to protract the recovery proceedings initiated against the petitioners and the property given as security. The extra ordinary discretionary jurisdiction under Article 226 ought not to have been exercised in favour of the petitioners, who had misled the Court by making totally false and untrue statements. Huge amounts are due from the petitioners. The loans have been availed by Jose Antony by misusing his position as the President of the Managing

Committee of the Bank, without even providing sufficient collateral security. No applications for setting aside the *ex parte* awards had been filed by the petitioners when the writ petitions were moved. Therefore, there ought not to have been a direction to the fifth respondent to consider non-existent applications. A person who invokes the extraordinary jurisdiction under Article 226 of the Constitution, must come to the court with clean hands, which is not the case here. Hence, the impugned judgments need to be set aside and the writ petitions dismissed with costs.

12. Heard Shri. Grashious Kuriakose, the learned senior counsel for the 3rd respondent- Bank/ appellant and Shri. I.Dinesh Menon, the learned counsel for the petitioners.

13. The impugned judgments are seriously assailed by the third respondent-Bank. It is submitted by Shri. Grashious Kuriakose, the learned senior counsel for the Bank that the writ petitions ought not to have been allowed and that this Court should not have invoked its discretionary jurisdiction in favour of a totally undeserving person. Having obtained such an order, Jose Antony, the former President of the

Bank, has now gone to the extent of even exhorting similarly placed defaulters to abstain from clearing their loan liabilities citing the impugned judgment. According to him, it is only due to the sheer and gross mismanagement of the Bank for 15 long continuous years by the said Jose Antony, the third respondent- bank is now finding itself in dire financial straits.

14. This Court under Art.226 of the Constitution of India, exercises equity jurisdiction, which is essentially discretionary. Writ of Mandamus is one of the prerogative writs issued by the superior Courts, which is in the shape of a command to the State, its instrumentality or its functionaries to compel them to perform their constitutional / statutory / public duty. The Apex Court explaining the discretionary limitations adopted by the Writ Court while issuing writ of mandamus in **Thansingh Nathmal v. Superintendent of Taxes, AIR 1964 SC 1419** held that the jurisdiction of the High Court under Art.226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the exercise of the jurisdiction is discretionary; it is not

exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self - imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Art. 226, where the petitioner has an alternative remedy which, without being unduly onerous, provides an equally efficacious remedy.

15. It is a settled position that the High Court do not ordinarily entertain a writ petition under Art.226 of the Constitution of India if an effective alternative remedy is available to the aggrieved person or if the statute itself provides for a mechanism for redressal of the grievance. It is also well settled that alternative remedy does not act as an absolute bar for entertaining a writ petition where the vires of any statutory provision is under challenge or the order impugned is completely without jurisdiction or has been passed in clear violation of the principles of natural justice (**Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1: AIR 1999 SC 22**).

16. In **Balkrishna Ram v. Union of India, AIR 2020 SC 341** it has been held that the principle that the High Court should not exercise its extraordinary writ jurisdiction when an efficacious alternative remedy is available, is a rule of prudence and not a rule of law. The writ courts normally refrain from exercising their extra ordinary power if the petitioner has an alternative efficacious remedy. The existence of such remedy however does not mean that the jurisdiction of the High Court is ousted. At the same time, it is a well settled principle that such jurisdiction should not be exercised when there is an alternative remedy available (**Union of India v. T. R. Varma, AIR 1957 SC 882**).

17. The rule of alternative remedy is a rule of discretion and not a rule of jurisdiction. Merely because the Court may not exercise its discretion, is not a ground to hold that it has no jurisdiction. There may be cases where the High Court would be justified in exercising its writ jurisdiction because of some glaring illegality committed. One must also remember that the alternative remedy must be efficacious. Therefore, it will be for the High Court to decide in the peculiar facts and circumstances of each case whether it should exercise its extraordinary

writ jurisdiction or not. There cannot be a blanket ban on the exercise of such jurisdiction because that would effectively mean that the writ court is denuded of its jurisdiction to entertain such writ petitions which is not the law laid down in **L. Chandra Kumar v. Union of India, AIR 1997 SC 1125.**

18. With respect to efficacious alternate remedy, the well-recognised exceptions are violation of the principles of natural justice; a proceeding taken under a provision of law which is ultra vires and when the proceeding itself is an abuse of the process of law. (**State of H.P v. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499: AIR 2005 SC 3936.**)

19. The question is, does this case fall under any of the above exceptions? The answer, we are afraid, can only be in the negative in the facts and circumstances of the cases. Rule 67(7)(b) of the Kerala Co-operative Societies Rules, 1969 (the Rules), empowers the arbitrator to decide a dispute *ex parte*. Though there is no specific provision in the Act or the Rules empowering the arbitrator to set aside an *ex parte* award, it is well settled in the light of the dictums in **Paul v. Asst. Registrar, 1998(2) KLT 449; Joseph A.R. v. Co-operative Arbitration Court, Kozhikode, 2014(1)**

KLJ 290; Joseph v. Co-operative Arbitration Court, 2014(2) KLT SN 40 and Angadi Service Co-operative Bank Ltd. v. Nissamu Kutty, 2016(2) KLJ 313 that the Arbitrator has got the necessary power to set aside *exparte* awards also, in case sufficient reasons are shown.

20. The petitioners here allege that they had not received any notice in the arbitration proceedings and it was without notice being served on them or hearing them, the awards came to be passed *exparte*. The Annexures produced by the 3rd respondent-Bank/appellant in the appeals will disprove this case of the petitioners. The said allegation seems to be a blatantly false statement. This is all the more so, because admittedly Jose Antony, the real or actual person behind all these loan transactions, was the President of the third respondent-Bank for about 15 years, during whose tenure, the decision to initiate ARC proceedings against the petitioners were taken. Therefore, it is highly unlikely that the defaulters were not served with summons as alleged in the petitions. Now even assuming that they had not received any summons before the awards were passed, they could have or rather ought to have filed applications for setting aside the same before the appropriate forum. They do not have

a case that the alternate remedy available is onerous. No reason(s) are given as to why the alternate remedy is not equally efficacious. On the other hand, their only case is that they had not received notice in the ARC proceedings and hence the third respondent is to be directed to consider their applications for setting aside the *ex parte* awards. They do not have a case that though they had filed applications seeking setting aside of the *ex parte* awards, the authority concerned did not or had refused to consider or entertain them.

21. Further, the third respondent-Bank has specifically taken up a stand that no applications for setting aside the *ex parte* awards had been filed by the petitioners on the date of the filing of the writ petitions, which case is not seen disputed by the petitioners. Therefore, on the date of filing the writ petitions, there appears to have been no applications pending before the authority concerned seeking setting aside of the *ex parte* awards. The petitioners may have filed the applications thereafter. However, the fact remains that there were no applications pending as on the date of filing the petitions and it is in respect of such non-existent

applications, the petitioners sought the indulgence of the court, which is nothing but a gross misuse or abuse of the process of the court.

22. In this case, admittedly the awards are of the year 2019, which is apparently before the onset of the Covid pandemic. Apparently, the loans must have been availed much before that. Therefore, the case put forward by the petitioners as to the reason why they were unable to repay the loan is also apparently a false statement. The petitioners also have a case that the amounts outstanding are not substantial and that if breathing time is granted, they would clear off the same. According to the 3rd respondent- Bank, the petitioners, apart from paying some interest in one loan or so, have not paid a single pie towards the loan liability, which is substantiated by the ledger statements produced as Ext.R3 series. The writ petitions seem to have been filed containing totally false and untrue statements and half-truths. We are quite conscious of the full bench decision in **K.S.Das v. State of Kerala, 1992(2) KLT 358 (F.B.)** dealing with the scope of interference in appeal under section 5 of the Kerala High Court Act, 1958 in which it has been held that there is difference between the question whether an appeal lies to a Division Bench and as

to the scope of interference. Normally, discretionary orders are not interfered with unless the impugned orders are without jurisdiction, contrary to law, or are perverse, and they also cause serious prejudice to the parties in such a manner that it might be difficult to restore the status quo ante or grant adequate compensation. The idea is to provide an internal remedy in such cases without compelling the parties to go all the way to the Supreme Court under Art.136 of the Constitution of India or increase the burden of that court unnecessarily. That being the position, we feel that in the circumstances referred to, this is not a fit case to invoke the discretionary extra ordinary jurisdiction of this court under Article 226 of the Constitution.

In the result, the writ appeals are allowed. The impugned judgments in the writ petitions are set aside and the writ petitions are dismissed.

Sd/-
P.B. SURESH KUMAR,
JUDGE.

Sd/-
C.S. SUDHA,
JUDGE.