

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 6TH DAY OF JANUARY 2023 / 16TH Pousha, 1944
WA NO. 2114 OF 2019
AGAINST THE JUDGMENT WP(C) 34002/2018 OF HIGH COURT OF
KERALA

APPELLANT/S:

- 1 THE TAHSILDAR (RR)
TALUK OFFICE, KOLLAM-691001**
- 2 THE SUB REGISTRAR,
SUB REGISTRY OFFICE, KUNDARA, KOLLAM-691501**
- 3 THE VILLAGE OFFICER,
VILLAGE OFFICE, PANAYAM, KOLLAM-691601
BY ADVS.
SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL
SHRI MOHAMMED RAFIQ, SPL GP
SHRI.JAFFER KHAN Y., SENIOR G.P.
SMT. RESHMITHA R. CHANDRAN, GP**

RESPONDENT/S:

- 1 NIZAMUDEEN.S.,
449, NOORA MANZIL, PANAYAM, PERINGAD.P.O.,
KOLLAM-691601**
- 2 SUHAIL.S
449, NOORA MANZIL, PANAYAM, PERINGAD.P.O.,
KOLLAM-691601**
- 3 ABDUL REHMAN.S
449, NOORA MANZIL, PANAYAM, PERINGAD.P.O.,
KOLLAM-691601**
- 4 STATE BANK OF INDIA,
STREET ASSET MANAGEMENT BRANCH, 32/1747 K1, 7TH
FLOOR, VENKARATH TOWERS, PALARIVATTOM BYPASS
JUNCTION, ERNAKULAM, KOCHI-682024**
- 5 SIRAJUDEEN
S/O.IBRAHIMKUTTY, PROPRIETOR, M/S.A.R.CASHEWS,
RESIDING AT VILAYILVEEDU, 2ND MILE STONE,
KILIKOLLOOR.P.O., KOLLAM-691104**

- 6 **BIJU JOHN**
 S/O.M.C.YOHANNAN, RESIDING AT VADAKKATHIL JOHNS
 BHASVAN, KARIPPARAM, MUKKODU.P.O., KUNDARA,
 KOLLAM-691501
- 7 **SHAFI MUSALIAR,**
 S/O.SAINULABDEEN MUSALIAR, RESIDING AT SHAFI
 MANZIL, KILIKOLLOOR VILLAGE, KARICODU,
 RANDAMKUTTY.T.K.M.COLLEGE P.O., KOLLAM-691104
- 8 **K.ROY**
 S/O.LATE.K.KUNJUKUNJU, RESIDING AT PLAVILA
 PUTHENVEEDU, NALLILAI.P.O., NEDUMPARA, KOLLAM-
 691515
 BY ADVS.
 SRI.S.EASWARAN
 SRI.E.D.GEORGE

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
06.01.2023, ALONG WITH WA.144/2020, 241/2020 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 6TH DAY OF JANUARY 2023 / 16TH Pousha, 1944
WA NO. 2449 OF 2019
AGAINST THE JUDGMENT WP(C) 27147/2018 OF HIGH COURT OF
KERALA

APPELLANT/S:

- 1 THE STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT OF
KERALA,
THIRUVANANTHAPURAM, PIN-695001.**
- 2 REVENUE DEPARTMENT GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-
695001, REPRESENTED BY ITS ADDITIONAL CHIEF
SECRETARY REVENUE.**
- 3 THE DISTRICT COLLECTOR,
ERNAKULAM, FIRST FLOOR, CIVIL STATION,
KAKKANAD, ERNAKULAM, PIN-682030.**
- 4 THE SPECIAL TAHSILDAR(RR),
KANAYANNUR, ERNAKULAM, PIN-682030.**
- 5 THE SALES TAX OFFICER,
3RD CIRCLE, ERNAKULAM, PIN-682018.**
- 6 THE STATE TAX OFFICER(LT),
ERNAKULAM, PIN-682018.**
- 7 THE DEPUTY COMMISSIONER OF STATE TAX(LAW),
ERNAKULAM, PIN-682011.
BY ADVS.
SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL
SHRI.JAFFER KHAN Y., SENIOR G.P.**

RESPONDENT/S:

- 1 PHOENIX ARC PRIVATE LIMITED
ACTING IN ITS CAPACITY AS TRUSTEE OF PHOENIX
TRUST FY-17-11, HAVING ITS REGISTERED OFFICE AT
5TH FLOOR,
DANI CORPORATE PARK, 158, CST ROAD,**

- KALINA, SANTA, CRUZ(E)MUMBAI -400098,
MAHARASTHRA, REPRESENTED BY ITS AUTHORIZED
OFFICER.**
- 2 THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY FINANCE
ROOM NO.46, NORTH BLOCK, NEW DELHI, PIN-110001.**
- 3 THE STATE BANK OF INDIA,
REP. BY THE GENERAL MANAGER, SME BRANCH,
FIRST FLOOR, JOY BUILDING, M. G. ROAD, ERNAKULAM-
682011.**
- 4 *ERNAKULAM TOURIST BULGALOW,
UNIT-BEUMONDE, THE FERN A PARTNERSHIP FIRM,
REP BY DR.C.K.DEVADAS-MANAGING PARTNER, VIVEKANDA
LANE, NEAR SOUTH RAILWAY STATION, ERNAKULAM,
KOCHI -6782016. *DELETED.**
- 5 *DR.C.K.DEVADAS,
S/O.SHRI C.K.KUNJAN, MANAGING PARTNER, ERNAKULAM
TOURIST BUNGALOW, UNIT-BEAUMONDE, THE
FERN, 41/3325, OLD RAILWAY STATION ROAD, ERNAKULAM,
KOCHI-682 018. *DECEASED**
- 6 MR.DEEPAK SATHYAPALAN,
S/O DR.P.A.SATHYAPALAN, PARTNER, ERNAKULAM TOURIST
BUNGALOW, UNIT-BEAUMONDE, THE FERN, 64/2047(OLD
NO.42/1711), MARKET ROAD, ERNAKULAM, KOCHI-682018.**
- 7 MRS.OMANA GOPALAN,
W/O DR.M.A.GOPALAN, PARTNER, ERNAKULAM TOURIST
BUNGALOW, UNIT-BEAUMONDE, THE FERN, 64/2047(OLD
NO.42/1711), MARKET ROAD, ERNAKULAM, KOCHI-682018.**
- 8 MRS.BHUVANESWARI SATHYAPALAN,
W/O.DR.A.SATHYAPALAN, PARTNER, ERNAKULAM TOURIST
BUNGALOW, UNIT-BEAUMONDE, THE FERN, 64/2047(OLD
NO.42/1711), MARKET ROAD, ERNAKULAM, KOCHI-682018.**
- 9 MRS.RADHA DEVADAS,
W/O.DR.C.K.DEVADAS, PARTNER, ERNAKULAM TOURIST
BUNGALOW, UNIT-BEAUMONDE, THE FERN, 41/3325(OLD
RAILWAY STATION ROAD, ERNAKULAM, KOCHI-682018.**
- 10 MR.D.SHYAM,
S/O DR.C.K.DEVADAS, PARTNER, ERNAKULAM TOURIST
BUNGALOW, UNIT-BEAUMONDE, THE FERN, 41/3325(OLD
RAILWAY STATION ROAD, ERNAKULAM, KOCHI-682018.**
- 11 MRS.RINU GOPALAN,
D/O.DR.M.A.GOPALAN, PARTNER, ERNAKULAM TOURIST
BUNGALOW, UNIT-BEAUMONDE, THE FERN, 41/3325(OLD
RAILWAY STATION ROAD, ERNAKULAM, KOCHI-682018.**
- 12 DR.M.A.GOPALAN,
S/O MR.ACHUTHAN, SREE RAMA VILASAM, OLD RAILWAY
STATION ROAD, ERNAKULAM, KOCHI-682018.**

- 13 DR.P.A.SATHYO,
42/1722, MARKET ROAD, ERNAKULAM, KOCHI -682018 .
- 14 STATE BANK OF INDIA,
COMMERCIAL BRANCH, 1ST FLOOR, EJ CHAMBERS,
RAVIPURAM, ERNAKULAM RES. BY BRANCH MANAGER, PIN-
682015 .
- 15 THE BRANCH MANAGER,
STATE BANK OF INDIA, COMMERCIAL BRANCH, 1ST FLOOR,
EJ CHAMBERS, RAVIPURAM, ERNAKULAM, PIN-682015 .

*R4 IS DELETED FROM THE PARTY ARRAY AS PER ORDER
DATED 26/8/2022 IN MEMO FILED BY SENIOR
GOVERNMENT PLEADER DATED 27/22 IN WA 2449/2019 .

- 16 ADDL.R16:SMT.M.K.CHINNAMMA,
W/O.KUNJAN, CHALAKKARAYIL, JANATHA
NIVAS, KACHERYTHAZHAM, MUVATTUPUZHA-686 661.
M/O.LATE DR.C.K.DEVADAS .
- 17 ADDL.R17:KUM.VRINDA DEVADAS,
D/O.DR.C.K.DEVADAS, HOUSE NO.41/3325, OLD RAILWAY
STATION ROAD, ERNAKULAM, KOCHI-682 018.
ADDL.R16 & R17 ARE IMPEADED AS PER ORDER DATED
26/8/2022 IN I.A.3/22 IN WA 2449/19 .
BY ADVS.
MANU S., ASG OF INDIA
MANSOOR.B.H.
SRI.S.EASWARAN
SRI.T.RAJESH
SRI.A.BALAGOPALAN
SRI.A.RAJAGOPALAN
SRI.P.BINNY JOSEPH
SRI.M.N.MANMADAN
SHRI.BASIL MATHEW
SRI.M.S.IMTHIYAZ AHAMMED
SMT.P.SEENA
ANJU MOHAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
06.01.2023, ALONG WITH WA.2114/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 6TH DAY OF JANUARY 2023 / 16TH POUSHA, 1944
WA NO. 132 OF 2020
AGAINST THE JUDGMENT WP(C) 37552/2017 OF HIGH COURT OF
KERALA

APPELLANT/S:

- 1 THE SUB REGISTRAR,
SUB REGISTRY OFFICE, KILIKOLLOOR,
KOLLAM-691 001.**
- 2 THE TAHSILDAR(RR),
KOLLAM-691 001.
BY ADVS.
SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL
SHRI.JAFFER KHAN Y., SENIOR G.P.**

RESPONDENT/S:

- 1 STATE BANK OF INDIA,
STRESSED ASSETS MANAGEMENT BRANCH,
VANKARATH TOWERS, BYPASS JUNCTION,
PALARIVATTOM, KOCHI-682 024. REPRESENTED BY ITS
CHIEF MANAGER.**
- 2 ST.ANTONY'S CARS (P) LTD.,
MEHER BUILDINGS, S.N.COLLEGE JUNCTION, KOLLAM-691
001.
BY ADV SRI.S.EASWARAN**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
06.01.2023, ALONG WITH WA.2114/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 6TH DAY OF JANUARY 2023 / 16TH Pousha, 1944
WA NO. 133 OF 2020
AGAINST THE JUDGMENT WP(C) 34380/2018 OF HIGH COURT OF
KERALA

APPELLANT/S:

- 1 THE TAHSILDAR (RR),
TALUK OFFICE, KOLLAM-691002.**
- 2 THE VILLAGE OFFICER,
VILLAGE OFFICE, KOLLAM EAST VILLAGE, KOLLAM-
691002.**
- 3 THE SUB REGISTRAR,
SUB REGISTRAR OFFICE, KOLLAM-691002.
BY ADVS.
SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL
SHRI.JAFFER KHAN Y., SENIOR G.P.
SMT. RESMITHA R. CHANDRAN, G.P.**

RESPONDENT/S:

- 1 STATE BANK OF INDIA,
STRESSED ASSETS RECOVERY BRANCH, LMS COMPOUND,
OPP. MUSEUM WEST GATE, THIRUVANANTHAPURAM-695033,
REPRESENTED BY ITS CHIEF MANAGER.**
- 2 SMT. G. VASANTHA GOPALAKRISHNAN,
PROPRIETOR, M/S. SANTHOSH INDUSTRIES, RESIDING AT
SANTHOSH NIVAS, M.G. STREET, THAMARAKULAM,
KOLLAM-691001.
BY ADV SRI.S.EASWARAN**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
06.01.2023, ALONG WITH WA.2114/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 6TH DAY OF JANUARY 2023 / 16TH Pousha, 1944
WA NO. 144 OF 2020
AGAINST THE JUDGMENT WP(C) 37543/2017 OF HIGH COURT OF
KERALA

APPELLANT/S:

- 1 THE SUB REGISTRAR, SUB REGISTRY OFFICE,
KILIKOLLOOR, KOLLAM - 691 004.**
- 2 THE TAHSILDAR (RR),
KOLLAM.
BY ADVS.
SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL()
SHRI MOHAMMED RAFIQ, SPL. GP
SMT. RESHMITHA R. CHANDRAN, GP**

RESPONDENT/S:

- 1 ANZAR BABU,
SHAMEEMA MANZIL, KALLUMTHAZHAM P.O., KOLLAM - 691
004.**
- 2 STATE BANK OF INDIA,
STRESSED ASSETS MANAGEMENT BRANCH, VANKARATH
TOWERS, BYPASS JUNCTION, PALARIVATTOM, KOCHI -
682 024, REPRESENTED BY ITS CHIEF MANAGER.**
- 3 ST.ANTONYS CARD (P) LTD.,
MEHER BUILDINGS, S.N.COLLEGE JUNCTION, KOLLAM -
691 001.
BY ADV SRI.S.EASWARAN**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
06.01.2023, ALONG WITH WA.2114/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 6TH DAY OF JANUARY 2023 / 16TH Pousha, 1944
WA NO. 204 OF 2020
AGAINST THE JUDGMENT WP(C) 28316/2016 OF HIGH COURT OF
KERALA

APPELLANT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO FINANCE
DEPARTMENT, THIRUVANANTHAPURAM, PIN - 695 001**
- 2 THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM, PIN - 695 001**
- 3 THE TAHSILDAR
REVENUE RECOVERY OFFICE, THIRUVANANTHAPURAM, PIN
- 695 001
BY ADVS.
SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL()
SHRI.S.RENJITH, SPL. G.P. TO A.A.G()**

RESPONDENT/S:

- 1 STATE BANK OF INDIA
SME BRANCH, ANDOOR BUILDING, GENERAL HOSPITAL
ROAD, VANCHIYOOR P.O., THIRUVANANTHAPURAM, PIN -
695 035, REPRESENTED BY ITS CHIEF MANAGER**
- 2 JOSEPHSON A.
PROPRIETOR, M/S. HILOTON MOTORS, SWARGADHANAM,
TC.6/1447, PTP NAGAR, THIRUVANANTHAPURAM, PIN -
695 038**
- 3 UNION OF INDIA
MINISTRY OF LAW AND JUSTICE, NEW DELHI - 110 001
REPRESENTED BY THE SECRETARY
BY ADVS.
SRI.S.EASWARAN
SRI.B.RAMACHANDRAN, CGC**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
06.01.2023, ALONG WITH WA.2114/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 6TH DAY OF JANUARY 2023 / 16TH Pousha, 1944
WA NO. 241 OF 2020
AGAINST THE JUDGMENT WP(C) 33547/2014 OF HIGH COURT OF
KERALA

APPELLANT/S:

- 1 TAHSILDAR (RR) HOSDURG TALUK,
KASARGODE-671 121.**
- 2 DEPARTMENT OF COMMERCIAL TAXES
REPRESENTED BY COMMISSIONER OF COMMERCIAL TAXES,
KASARGOD 671 121.**
- 3 COMMERCIAL TAX OFFICER
HOSDURG, KANHANGAD P.O., KASARGOD.
BY ADVS.
SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL
SHRI.JAFFER KHAN Y., SENIOR G.P.**

RESPONDENT/S:

- 1 DEWAN HOUSING FINANCE CORPORATION LTD.
HAVING ITS REGISTERED OFFICE/NATIONAL OFFICE AT
HDIL TOWERS, 6TH FLOOR, STATION ROAD, A.K.MARG,
BANDRA EAST, MUMBAI-4000051 HAVING ITS KANNUR
BRANCH OFFICE, AT D NO.TC 33/363 N, 2ND FLOOR,
GRAND PLAZA FORT ROAD, KANNUR REPRESENTED BY ITS
AUTHORIZED OFFICER.**
- 2 ANVAR P.H.
S/O. SAFIA, HAMAS VILLA 5 KUNIYA PULLUR PERIYA
GRAMA PANCHAYATH, KUNIYA HOSDURG TALUK, KASARGOD-
671 121.**
- 3 SHAKEELA P.A.
D/O. ASHIYUMMA, HAMAS VILLA 5 KUNIYA PULLUR
PERIYA GRAMA PANCHAYATH, KUNIYA HOSDURG TALUK,
KASARGOD-671 121.
BY ADV. SRI. P. PAULOCHAN ANTONY**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
06.01.2023, ALONG WITH WA.2114/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 6TH DAY OF JANUARY 2023 / 16TH Pousha, 1944
WA NO. 616 OF 2021
AGAINST THE JUDGMENT WP(C) 35082/2019 OF HIGH COURT OF
KERALA

APPELLANT/S:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
DEPARTMENT OF TAXES, SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2 DISTRICT COLLECTOR,
COLLECTORATE, CIVIL STATION, ALAPPUZHA, PIN-
688001.**
- 3 THASILDAR (REVENUE RECOVERY),
AMBALAPUZHA, KIDANGAMPARAMP, ALAPPUZHA-688013.
BY ADVS.
SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL
SHRI.JAFFER KHAN Y., SENIOR G.P.**

RESPONDENT/S:

**BANK OF BARODA
ROSARB, ERNAKULAM, PALLIMUKKU, M.G.ROAD,
ERNAKULAM, REPRESENTED BY ITS CHIEF MANAGER.
BY ADVS. ADARSH KUMAR
K. M. ANEESH**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
06.01.2023, ALONG WITH WA.2114/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 6TH DAY OF JANUARY 2023 / 16TH POUSHA, 1944

WA NO. 1096 OF 2021

AGAINST THE JUDGMENT WP(C) 6348/2021 OF HIGH COURT OF KERALA

APPELLANT/S:

- 1 DISTRICT COLLECTOR,
COLLECTORATE, CIVIL STATION, ALAPPUZHA, PIN-688 001.**
- 2 SUB REGISTRAR
MARARIKKULAM SUB REGISTRARS OFFICE, MARARIKKULAM P.O.,
ALAPPUZHA DISTRICT, PIN-688 522.**
- 3 VILLAGE OFFICER
MANNANCHERY VILLAGE, MANNANCHERRY P.O., ALAPPUZHA
DISTRICT, PIN-688 538.**
- 4 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, DEPARTMENT
OF TAXES, SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 5 TAHASILDAR (REVENUE RECOVERY)
AMBALAPUZHA, KIDANGAMPARAMP, ALAPPUZHA DISTRICT, PIN-
688 013.**
- 6 ADDL. AGRICULTURE INCOME TAX AND SALE TAX OFFICER
SOUGHT TO BE IMPEADED.
BY ADVS.
SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL
SHRI.JAFFER KHAN Y., SENIOR G.P.**

RESPONDENT/S:

- 1 BANK OF BARODA
ROSARB, ERNAKULAM, PALLIMUKKU, M.G.ROAD, ERNAKULAM,
REPRESENTED BY ITS CHIEF MANAGER.**
- 2 RAJ TRADERS
REPRESENTED BY ITS MANAGING PARTNER, MR. JANNATHUL,
FIRDOUSE, OPPOSITE FEDERAL BANK, MANNANCHERRY P.O.,
ALAPPUZHA DISTRICT, PIN-688 538.
BY ADVS RAVI KRISHNAN
K.M. ANEESH
ADARSH KUMAR**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
06.01.2023, ALONG WITH WA.2114/2019 AND CONNECTED CASES, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT**

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 6TH DAY OF JANUARY 2023 / 16TH Pousha, 1944

WA NO. 1655 OF 2021

**AGAINST THE JUDGMENT WP(C) 530/2021 OF HIGH COURT OF KERALA
APPELLANT/S:**

- 1 THE DISTRICT REGISTRAR (GENERAL)
ERNAKULAM REGISTRAR OFFICE, ERNAKULAM HEAD POST
OFFICE P O, ERNAKULAM, PIN-682011.**
- 2 THE SUB REGISTRAR
ERNAKULAM REGISTRAR OFFICE, ERNAKULAM HEAD POST
OFFICE P O, ERNAKULAM-682011.**
- 3 COMMERCIAL TAX OFFICER
2ND CIRCLE, KALAMASSERY,
2ND FLOOR,
NEW BLOCK, CIVIL STATION,
THRIKKAKARA, ERNAKULAM DISTRICT,
KERALA PIN-682030.
BY ADVS.
SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL()
SHRI.JAFFER KHAN Y., SENIOR G.P.()**

RESPONDENT/S:

- 1 FARZANA KHATOON @ FARZANA PARVEZ
AGED 34 YEARS
D/O SEKH ROSHA,
6 AHIRIOPUKUR,
2ND LANE WARD NO.69,
KOLKATA, BALLYGUNGE,
WEST BENGAL, PIN-700019.**
- 2 INDIABULLS ASSET RECONSTRUCTION COMPANY LTD
REGISTERED OFFICE AT INDIABULLS FINANCE CENTRE,
TOWER, 9, SENAPATI BAPAT MARG, ELPHIN STONE ROAD,
MUMBAI-400013, REPRESENTED BY ITS AUTHORISED
OFFICER
BY ADVS.
RETHEESH NA**

**MOHAN JACOB GEORGE
P.V.PARVATHY (P-41)
REENA THOMAS
NIGI GEORGE
RENJITH.R
PRASUN.S(K/366/2003)
PAUL MATHEW (PERUMPILLIL)(K/252/1989)**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
06.01.2023, ALONG WITH WA.2114/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 6TH DAY OF JANUARY 2023 / 16TH POUSHA, 1944
WA NO. 620 OF 2022
AGAINST THE JUDGMENT WP(C) 30554/2021 OF HIGH COURT OF
KERALA

APPELLANT/S:

- 1 THE TAHSILDAR
TALUK OFFICE, KOLLAM TALUK, PIN - 691001**
- 2 THE VILLAGE OFFICER
VADAKKEVILA VILLAGE, KOLLAM DISTRICT, PIN -
691010.**
- 3 THE SUB REGISTRAR
OFFICE OF THE SUB REGISTRAR, ERAVIPURAM, KOLLAM
DISTRICT, PIN - 691011
BY ADV. SHRI.JAFFER KHAN Y., SENIOR G.P.**

RESPONDENT/S:

**M/S ARAMS TOURISM PRIVATE LIMITED
KMC 16/1244, KOCHUKOICKAL VEEDU, ASRAMOM.P.O,
KOLLAM, PIN 691002 REPRESENTED BY ITS MANAGING
DIRECTOR, MR. P. ABDUL SALAM, PIN - 691002
BY ADV SERGI JOSEPH THOMAS**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
06.01.2023, ALONG WITH WA.2114/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 6TH DAY OF JANUARY 2023 / 16TH POUSHA, 1944
WA NO. 652 OF 2022
AGAINST THE JUDGMENT WP(C) 30423/2021 OF HIGH COURT OF
KERALA

APPELLANT/S:

- 1 THE TAHSILDAR
TALUK OFFICE, KARTHIKAPALLY TALUK, PIN - 690514**
- 2 THE VILLAGE OFFICER
CHEPPAD VILLAGE, ALAPPUZHA DISTRICT, PIN - 690507**
- 3 THE SUB REGISTRAR
OFFICE OF THE SUB REGISTRAR, CHEPPAD, ALAPPUZHA
DISTRICT, PIN - 690507
BY ADV. SHRI. JAFFER KHAN Y., SENIOR G.P.**

RESPONDENT/S:

**RENEE JOSHUA
AGED 37 YEARS
W/O JACKSON, JOSE
BHAVANAM, NADUVILEMURI, ANAYADI.P.O, KUNNATHUR, SOORA
NADU SOUTH, KOLLAM DISTRICT, PIN - 690561
BY ADV SERGI JOSEPH THOMAS**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
06.01.2023, ALONG WITH WA.2114/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 6TH DAY OF JANUARY 2023 / 16TH Pousha, 1944
WA NO. 659 OF 2022
AGAINST THE JUDGMENT WP(C) 30524/2021 OF HIGH COURT OF
KERALA

APPELLANT/S:

- 1 THE TAHASILDAR
TALUK OFFICE,
KOLLAM TALUK, PIN - 691001**
- 2 THE VILLAGE OFFICER
NEDUMBANA VILLAGE,
KOLLAM DISTRICT, PIN - 691576**
- 3 THE SUB REGISTRAR
OFFICE OF THE SUB REGISTRAR,
KANNANALLOOR,
KOLLAM DISTRICT, PIN - 691576
BY ADVS. SHRI. JAFFER KHAN Y., SENIOR G.P.
SMT. RESHMITHA R. CHANDRAN**

RESPONDENT/S:

**SAIJU SATHYAPALAN
AGED 52 YEARS
S/O PARAMESWARAN SATHYAPALAN,
MOOKAMBIKA,
CHERUMOOD,
PERINAD,
KOLLAM, PIN - 695511
BY ADV SERGI JOSEPH THOMAS**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
06.01.2023, ALONG WITH WA.2114/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 6TH DAY OF JANUARY 2023 / 16TH Pousha, 1944
WA NO. 723 OF 2022
AGAINST THE JUDGMENT WP(C) 4252/2022 OF HIGH COURT OF
KERALA

APPELLANT/S:

- 1 STATE OF KERALA REPRESENTED BY THE PRINCIPAL
SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001**
- 2 THE DISTRICT COLLECTOR
COLLECTORATE, CIVIL LINES, CUTCHERY P.O., KOLLAM,
PIN - 691013**
- 3 THE TAHSILDAR (RR)
TALUK OFFICE, KOLLAM, PIN - 691001**
- 4 THE TAHSILDAR(LR)
TALUK OFFICE, KOLLAM, PIN - 691001**
- 5 THE VILLAGE OFFICER
KILIKOLLUR VILLAGE, KILIKOLLUR P.O., KOLLAM, PIN
- 691004**
- 6 THE SUB REGISTRAR
REGISTRATION DEPARTMENT, KILIKOLLUR P.O., KOLLAM,
PIN - 691004
BY ADVS.
SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL
SHRI.JAFFER KHAN Y., SENIOR G.P.**

RESPONDENT/S:

**LAIJA NAVABUDEEN
AGED 53 YEARS
W/O NAVABUDEEN, SEMI, PERAYAM, THAZHUTHALA,
UMAYANALLOOR P.O., KOLLAM, PIN - 691589
BY ADV L. RAJESH NARAYAN**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
06.01.2023, ALONG WITH WA.2114/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 6TH DAY OF JANUARY 2023 / 16TH Pousha, 1944
WA NO. 817 OF 2022
AGAINST THE JUDGMENT WP(C) 12849/2018 OF HIGH COURT OF
KERALA

APPELLANT/S:

- 1 THE ASSISTANT COMMISSIONER (ASSMT)
OFFICE OF THE ASSISTANT COMMISSIONER, SPECIAL
CIRCLE, KOLLAM-691 001.**
- 2 THE TAHSILDAR,
REVENUE RECOVERY, KOLLAM-691 008.
BY ADVS.
SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL
SHRI.JAFFER KHAN Y., SENIOR G.P.**

RESPONDENT/S:

- 1 M/S.ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED,
'THE RUBY', 10TH FLOOR, 29 SENAPATI BAPAT
MARG, DADAR (WEST) MUMBAI-400 028, REPRESENTED BY
AUTHORISED SIGNATORY RAMESH RAMAN.**
- 2 MVR INDUSTRY LIMITED.
FORMERLY KNOWN AS MVR EXPORTS PVT.LTD.NO.24, GST
ROAD, GUINDY, CHENNAI-32,
REPRESENTED BY ITS MANAGING DIRECTOR.
BY ADV MADHU RADHAKRISHNAN**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
06.01.2023, ALONG WITH WA.2114/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

J U D G M E N T

**[W. A. Nos. 2114 & 2449 of 2019,
132, 133, 144, 204 & 241 of 2020,
616, 1096 & 1655 of 2021
& 620, 652, 659, 723 & 817 of 2022]**

Shaji P. Chaly J.

The captioned writ appeals are filed by the State and its officials challenging the common judgment of the learned Single Judge in W. P. (C) Nos. 28316 of 2016 and other connected matters dated 30.07.2019, whereby the writ petitions filed by the financial institutions guided by the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) are allowed; and held that a secured creditor under Section 26E of the SARFAESI Act and Section 31B of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act, 1993) obtains priority over the right claimed by the Revenue, both in proceeding against the properties in question, or in recovering the secured debt, and accordingly quashed the proceedings initiated by the sales tax authorities and the registration authorities.

2. Admittedly, amounts are due from various registered dealers,

under the state laws, who have availed loans from various financial institutions. Proceedings were initiated as per the provisions of the Kerala General Sales Tax Act, 1963 (KGST Act, 1963) and the Kerala Value Added Tax Act, 2003 (KVAT Act, 2003) to recover the amounts due to the Government. Therefore when steps were taken to register the documents pertaining to the properties sold by the Banks under the provisions of the SARFAESI Act, 2002 / the RDB Act, 1993, the Registration department raised objections and issued proceedings conveying that, since amounts are due to the State Government, as per the provisions of the statutes referred to above first charge is created over the properties and therefore documents cannot be registered, as per the provisions of the Registration Act, 1908.

3. In some of the cases, the auction purchasers have sought direction to the registrars to register the sale certificates in favour of the purchasers. In some of the cases, the State Government has proceeded against the properties which are mortgaged to the financial institutions to recover the arrears of sales tax and value added tax invoking the provisions of the Kerala Revenue Recovery Act, 1968. The Banks / financial institutions are claiming that they have the right

as secured creditors to proceed against the properties in question in terms of the provisions of Section 26E of the SARFAESI Act, 2002 and Section 31B of the RDB Act, 1993, and the statutory charges as per the state acts no longer survive.

4. But, at the same time, the Revenue / Finance Department of the State claims first charge over the properties under the provisions of Section 26B of the KGST Act, 1963 and Section 38 of the KVAT Act, 2003. The issue therefore, by and between the financial institutions and the State Government with respect to the rival claims, is as to who has the right to proceed against the property, and further, if the Bank has sold any property whether the first charge created under the statutes referred to above would still continue to run with the properties sold.

5. We have heard learned Special Government Pleader Sri. Mohammed Rafiq, learned Senior Government Pleader Sri. Jaffer Khan and learned Government Pleader Smt. Reshmitha R. Chandran for the appellant State and its officials, Sri. S. Easwaran, learned counsel for the State Bank of India, Sri. P. Paulochan Antony, learned counsel for Dewan Housing Finance Corporation Ltd., Sri. Adarsh Kumar and Sri. K. M. Aneesh, learned counsel for the Bank of Baroda,

Sri. Mohan Jacob George, learned counsel for M/s. Indiabulls Asset Reconstruction Company Ltd., Sri. Sergi Joseph Thomas, learned counsel for M/s Arams Tourism Private Ltd., Smt. Renee Joshua and Sri. Saiju Sathyapalan, Sri. L. Rajesh Narayanan, learned counsel for Smt. Laija Nawabuddin and Sri. Madhu Radhakrishnan, learned counsel for M/s. Asset Reconstruction Company (India) Ltd. and perused the pleadings and material on record.

6. Section 26E contained under Chapter IV-A of the SARFAESI Act 2002 was brought into force with effect from 01.09.2016. The said provision specifies that notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

7. Section 26B deals with registration by secured creditors and other creditors. Sub-section (1) thereto states that the Central Government may by notification, extent the provisions of Chapter IV A relating to Central Registry to all creditors other than secured

creditors as defined in clause (zd) of sub-section (1) of Section 2, for creation, modification or satisfaction of any security interest over any property of the borrower for the purpose of securing due repayment of any financial assistance granted by the such creditor to the borrower.

8. Sub-section (2) thereto states that from the date of notification under sub-section (1), any creditor including the secured creditor may file particulars of transactions of creation, modification or satisfaction of any security interest with the Central Registry in such form and manner as may be prescribed.

9. Sub-section (3) stipulates that a creditor other than the secured creditor filing particulars of transactions of creation, modification and satisfaction of security interest over properties created in its favour shall not be entitled to exercise any right of enforcement of securities under the Act.

10. Sub-section (5) specifies that if any person, having any claim against any borrower, obtains orders for attachment of property from any court or other authority empowered to issue attachment order, such person may file particulars of such attachment orders with Central Registry in such form and manner on payment of such fee as may be

prescribed.

11. Section 26C deals with effect of the registration of transactions and sub-section (1) states that without prejudice to the provisions contained in any other law, for the time being in force, any registration of transactions of creation, modification or satisfaction of security interest by a secured creditor or other creditor or filing of attachment orders under Chapter IV-A shall be deemed to constitute a public notice from the date and time of filing of particulars of such transaction with the Central Registry for creation, modification or satisfaction of such security interest or attachment order, as the case may be.

12. Sub-section (2) thereto states that where security interest of attachment order upon any property in favour of the secured creditor or any other creditor are filed for the purpose of registration under the provisions of Chapter IV and Chapter IV-A, the claim of such secured creditor or other creditor holding attachment order shall have priority over any security interest created upon such property and any transfer by way of sale, lease or assignment or license of such property or attachment order subsequent to such registration, shall be subject to

such claim.

13. Section 31B of the RDB Act, 1993 which deals with priority to secured creditors states that notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realize secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

14. Therefore, on an analysis of the aforesaid provisions, it can be seen that there are certain modalities prescribed for registration of other attachments etc taken against the properties mortgaged by the loanees before the financial institutions. However, Section 26E only specifies that the secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

15. Rule 8 of the Security Interest (Enforcement) Rules, 2002 (Rules 2002) deals with sale of immovable secured assets. Sub-section (1) thereto states that where the secured asset is an immovable

property, the authorized officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to the Rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

16. Sub-rule (5) of the aforesaid Rule specifies that before effecting sale of the immovable property referred to in sub-rule (1) of Rule 9, the authorized officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of a such immovable secured asset by the method prescribed as follows:- (a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets; or (b) by inviting tenders from the public; (c) by holding public auction including through e-auction mode, or (d) by private treaty.

17. Sub-rule (6) of Rule 8 states that the authorized officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5). However the proviso thereto states that if the sale of such secured asset is being effected by either inviting

tenders from the public or by holding a public auction, the secured creditor shall cause a public notice in the form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality.

18. That apart, sub-rule (7) thereto clarifies that every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorized officer shall upload the detailed terms and conditions of the sale, on the website of the secured creditor, which shall include (a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor; (b) the secured debt for recovery of which the property is to be sold; (c) reserve price of the immovable secured assets below which the property may not be sold; (d) time and place of the public auction or the time after which sale by any other mode shall be completed; (e) deposit of earnest money as may be stipulated by the secured creditor; and (f) any other terms and conditions, which the authorized officer considers it necessary for a purchaser to know the nature and value of the property.

19. Rule 9 (1) stipulates that no sale of immovable property

under the Rules 2002, in first instance shall take place before the expiry of 30 days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower.

20. Sub-rule (2) of Rule 9 states that the sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorized officer and shall be subject to confirmation by the secured creditor. Other rules are provided thereto to deal with the payment to be effected by the purchaser.

21. Sub-rule (6) of Rule 9 dealing with confirmation of sale states that 'on confirmation of sale by the secured creditor and if the terms of the payment have been complied with, the authorized officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the form given in Appendix V to the Rules.

22. Sub-rule (7) of Rule 9 specifies that where the immovable property sold is subject to any encumbrances, the authorized officer may, if he thinks fit, allow the purchaser to deposit the money required

to discharge the encumbrances and if any interest due thereon, together with any additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.

23. The proviso to Rule 9(7) is of utmost importance which states that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of the money deposited by the purchaser such surplus shall be paid to the purchaser within fifteen days from the date of finalization of the same.

24. Again Rule 9(8) very pertinently clarifies that on such deposit of money for discharge of the encumbrances, the authorized officer shall issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited within and take steps to make the payment accordingly.

25. Rule 9(9) stipulates that the authorized officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7).

26. It is significant to note that Rule 9(10) explicitly states that

the certificate of sale issued under sub-rule (6) shall specifically mention whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.

27. Therefore the contention advanced by the State Government is that reading the provisions of Section 26E and Rules 8 and 9 of the act and rules 2002 in juxtaposition, it is explicit that there is a clear-cut procedure prescribed under the Rules to enforce the security interest and to remove the encumbrances in the property. Therefore, it is the contention of the State Government that without satisfying the requirements of Rules 8 and 9 of the Rules 2002, the first charge created as per the provisions of the KSGT Act, 1963 and the KVAT Act, 2003 would continue to run with the property.

28. Per contra, the contention advanced by the financial institutions is that the Rules discussed above are in violation of Section 26E since Section 26E creates a priority to the secured creditors. However, in respect of the same, the State Government contents that there is only priority to the secured creditors for payment of the debts due over all other debts, revenues, taxes etc., and therefore, merely

because the financial institutions have exercised their priority even by sale of the property, the first charge created in favour of the Government as per the statutes said above would not be eliminated.

29. In order to proceed further, we are of the view that the concerned provisions of the KGST Act, 1963 and the KVAT Act, 2003 are to be discussed.

30. Section 26B of KGST Act, 1963 enumerates that tax payable under the said Act to be first charge on the property. The said provision reads that notwithstanding anything to the contrary contained in any other law for the time being in force, any amount of tax, penalty, interest and any other amount, if any, payable by a dealer or any other person under the Act shall be the first charge on the property of the dealer or such person.

31. Likewise, Section 38 of the KVAT Act, 2003 dealing with the tax payable to be first charge on the property, states that notwithstanding anything to the contrary contained in any other law for the time being in force, any amount of tax, penalty, interest and any other amount, if any, payable by a dealer or any other person under the Act shall be the first charge on the property of the dealer, or such

person.

32. Section 27 of KVAT Act, 2003 dealing with certain transfer to be void stipulates that where during the pendency of any proceedings under the Act or after the completion thereof any assessee creates a charge on or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of any of his assets in favour of any person such charge or transfer shall be void as against any claim in respect of any tax or other sum payable by the assessee under the Act.

33. Therefore the contention advanced by the State Government is that even going by the provisions of the SARFAESI Act, 2002 and the RDB Act 1993 discussed above, they are not creating any charge on the properties mortgaged with the financial institutions, especially when the phraseology employed in Section 26E is only for priority of payment of the debts due. It is also the contention of the State Government that Rules 8 and 9 discussed above would give a clear picture as to the manner in which the sale notices are to be published by the Bank and the manner in which the encumbrances are to be removed.

34. It is also submitted by the State Government that as per Section 31 of the KVAT Act, 2003 dealing with payment and recovery of tax that every dealer liable to pay tax under this Act for any return period shall pay tax within such period as may be prescribed and on failure of the dealer from whom any tax or other amount is demanded to pay within fifteen days from the date of service of notice, the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties on the person or persons liable to pay the tax or other amount under the Act.

35. Sub-section (4) of Section 31 further stipulates that any tax or any other amount due under the Act from a dealer or any other person may, without prejudice to any other mode of recovery, be recovered; a) as if it were an arrear of land revenue; (b) on application to any magistrate, by such magistrate, if it were a fine imposed by him.

36. Therefore according to the State Government, purchase of an immovable property made by any person in a sale conducted by a financial institution as per the provisions of SARFAESI Act, 2002 and the RDB Act, 1993 are liable to pay the amounts due in order to secure a sale certificate free of encumbrances.

37. In order to understand the true implication of a sale notice issued under Rule 8 of the Rules 2002, Appendix IV-A constituted as per Rule 8(6) is extracted hereunder:-

“APPENDIX IV-A

[See proviso to rule 8(6)]

SALE NOTICE FOR SALE OF IMMOVABLE PROPERTIES

E-Auction sale Notice for Sale of Immovable Assets under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 read with proviso to rule 8(6) of the Security Interest (Enforcement) Rules, 2002.

Notice is hereby given to the public in general and in particular to the Borrower(s) and Guarantor(s) that the below described immovable property mortgaged/charged to the Secured Creditor, the constructive/physical (whichever is applicable) possession of which has been taken by the Authorised Officer of Secured Creditor, will be sold on “As is where is”, “As is what is” and “Whatever there is” on (mention date of the sale), for recovery of Rs..... due to the Secured Creditor from (mention name of the Borrower(s) and (mention name of the Guarantor(s)). The reserve price will be Rs..... and the earnest money deposit will be Rs.....

(Give short description of the immovable property with known encumbrances, if any)

For detailed terms and conditions of the sale, please refer to the link provided in Secured Creditor’s website, *i.e.*, [www.\(give details of website\)](#).

Date:

Place:

Authorised Officer”

38. Appendix 5 made as per Rule 9(6) of the Rules 2002 reads thus:-

“APPENDIX V

[See rule 9(6)]

SALE CERTIFICATE

(For Immovable Property)

Whereas

The undersigned being the authorised officer of the (name of the Institution) under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest [Act], 2002 (54 of 2002) and in exercise of the powers conferred under section 13 read with [rules 8 and 9] of the Security Interest (Enforcement) Rules, 2002 sold on behalf of the (name of the secured creditor/institution) in favour of (purchaser), the immovable property shown in the schedule below secured in favour of the (name of the secured creditor) by (the names of the borrowers) towards the financial facility (description) offered by (secured creditor). The undersigned acknowledge the receipt of Rs..... (Rupees only), the sale price in full and handed over the delivery and possession of the schedule property. The sale of the scheduled property was made free from all encumbrances known to the secured creditor listed below on

deposit of the money demanded by the undersigned.

DESCRIPTION OF THE MOVABLE PROPERTY

All that part and parcel of the property consisting of Flat
No...../Plot No..... in Survey No.
...../City or Town Survey
No...../Khasra No..... within
the registration Sub District and District

Bounded:

On the North by

On the South by

On the East by

On the West by

List of Encumbrances

- 1.
- 2.

Sd/-

Authorised Officer
(Name of the Institution)

Date:

Place:”

39. On a reading of the sale notice, it is evident that the notice contained clear expressions and terminologies in order to ensure that

the properties are sold 'as is where is', 'as is what is', and 'whatever there is' condition. We will come to the true implication of those expressions used in the sale notice at a later point of time.

40. According to the State Government, when such a notice is issued by the financial institutions to sell off the secured asset making it clear that the properties offered for sale is in whatever condition it remains, a purchaser participating in a sale proceeding of whatever nature, is duty bound to make due enquiries in order to identify and find out whether any encumbrance is created on the properties offered for sale.

41. It is also to be noted that the provisions of the Transfer of Property Act, 1882 (TP Act 1882) would also have to be taken into account in order to arrive at a proper conclusion since Section 2(2) of the SARFAESI Act, 2002 makes it clear that words and expressions used and not defined under the Act 2002 but defined in the Indian Contract Act, 1872, or the Transfer of Property Act, 1882, or the Companies Act, 1956, or the Securities and Exchange Board of India Act, 1992, shall have the same meanings respectively assigned to them in those Acts.

42. In this context, Section 3 interpretation clause of the TP Act, 1882 is relevant. Section 3 states that ‘in this Act, unless there is something repugnant in the subject or context,a person to have notice of a fact when he actually knows that fact, or when, but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it’.

43. Therefore, the sale notice issued by the Bank as said above is to alert or caution any person purchasing the property to conduct due enquiries, and if he fails or being negligent to make any enquiry, Section 3 interpretation clause of T. P. Act 1882 discussed above makes it clear that the encumbrance is deemed to be known to the purchaser.

44. This provision of the TP Act, 1882 read with Rules 8 and 9 of the Rules 2002, makes it explicit that the notice issued by the Bank is to meet its statutory requirements contained under Section 3 of the TP Act, 1882. This is more so, since Section 3 of the TP Act, 1882 and the provisions of Rule 8 and 9 of the Rules 2002 has no contradiction at all. But on the other hand, the notice issued under Appendix IV-A of the Rules 2002 wherein the expressions like ‘as is where is’, ‘as is

what is', and 'whatever there is' makes it clear that it is done only with the intention of cautioning the public who are intending to deal with the property offered for sale.

45. In this context, a reference to Section 100 of the TP Act 1882 dealing with charges would be appropriate. It reads that 'where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a single mortgage shall, so far as may be, apply to such charge'.

46. Therefore, according to the Government, as per the provisions of the KGST Act, 1963 and the KVAT Act, 2003 discussed above, the security for the payment of money to the State Government is created by operation of law.

47. In fact, the State Government has produced several documents along with I. A. No. 3 of 2022 and I.A No 2 of 2022 in W. A. Nos. 620 and 652 of 2022 in order to establish that amounts are due from the dealers who have mortgaged properties with the Bank, before

the mortgage was created with the Bank. So also, the notices issued under the Kerala Revenue Recovery Act, 1968 attaching the properties are produced to show that a charge was created to the State Government on the failure of the dealer / mortgagor failing to pay the amount of tax which has fallen due in terms of the provisions of the KGST Act, 1963 as well as the KVAT Act, 2003.

48. Learned Special Government Pleader has invited our attention to a Division Bench judgment of this Court in **Hamsa v. Assistant Commissioner [2008 (3) KLT 180]** to canvas a proposition that to attract Section 26A of the KGST Act, 1963 dealing with certain transfers to be void, that it is not necessary that the assessment should be completed and that a demand should be made to the assessee to pay any amount; and also for the proposition that the transferee is not entitled to put forward any defence that transfer was made for valid consideration or that he is a bonafide purchaser for value.

49. Our attention was also invited to a Division Bench judgment of this Court in **Noushad Abbas and Another v. The Commissioner of Commercial taxes and Others [2013 SCC Online Ker. 15811]** wherein the judgment in **Hamsa** (supra) was quoted with approval and

held that the transferee is not entitled to put forward any defence that the transfer was made for valid consideration or that he is a bonafide purchaser for value and that once the ingredients of Section 26A are attracted, the transfer made by the assessee would be void.

50. Contentions are advanced by the learned Special Government Pleader on the basis of a judgment rendered by a Division Bench of the Bombay High Court in **Medineutrina Pvt. Ltd. v. District Industries Centre [AIR 2021 Bom. 135]** which considered the very same question vis-a-vis the Maharashtra Value Added Tax Act, 2002. After elaborate discussion of the provisions of the SARFAESI Act, 2002, the Maharashtra Value Added Tax Act, 2002, the Transfer of Property Act, 1882, and other laws, the Division Bench of the Bombay High Court has arrived at the following conclusions:-

“41. The secured creditor under the SARFAESI Act, therefore must in all cases ensure:

(a) that the property offered as a security interest is free from any encumbrance whatsoever, at the time when it is so offered initially, to avail financial credit by the owner/s:

(b) in all such cases, a title verification certificate, by a lawyer, at the penalty of cancellation of his license to practice, in

case such certificate is found to be false, should be a must, which certificate should also contain a statement that the lawyer has also verified the suits filing register of the Court, within whose jurisdiction, the property is situated to ascertain, whether the same is the subject matter of any litigation and an affidavit from the borrowers that it is not so;

(c) in all such cases, a valuation certificate, by a Government approved, at the penalty of cancellation of his licence, in case such certificate is found to be false, should be a must;

(d) Immediately upon creation of security interest in its favour for payment of its dues, the bank must inform all the Central/State/Local Authorities regarding creation of such security interest, including the Sub-Registrar of documents and City Survey office concerned;

(e) the bank/secured creditor, should before any property is attached and auctioned:

(i) enquire with the Central/State/Local authorities regarding any dues on the property sought to be auctioned and in case such dues are found, to mention the same in the public notice to be published Inviting bids, so that the bidder, is made aware of the liability and encumbrance, which the property carries with it.

(ii) where the secured creditor, has taken symbolic possession and is not in physical possession of the property,

the public notice must indicate the nature of such possession and if the Secured creditor is unable to secure actual possession, the reason for not getting such possession (whether there is a tenant/licensee/family member/encroacher etc in occupation of the property, so that the bidder, is consciously made aware of the situation in which the property is and makes a conscious offer/bid.

(iii) Where the secured creditor, is aware of Statutory dues the payment of which is a charge upon the property, the same could be included in the reserve price, for sale of the property or got deposited from the bidder separately, so that the encumbrance could be cleared, by the secured creditor.

(iv) where the secured creditor is aware of encumbrance, the value for discharging such encumbrance, either can be included in the reserve price or got deposited from the bidder, so that the encumbrance could be cleared, by the secured creditor.

The secured creditor, as a creation of a Statute, is meant for the benefit and Interest of the citizens and is not expected to play hide and seek, in its dealings, but has to act fairly and is under an obligation in law, to make a full and candid disclosure as to the dues and encumbrances in respect of the property put to auction and the status as to possession of the property, for which it has to make reasonable enquiries, which should be demonstrable from the record. The secured creditor cannot be heard to say that It was for the bidder to obtain such information,

for the reason, that being a lender, it is already holding the documents of the borrower, which confer upon it a right to obtain such Information.

42. What we have stated above, is nothing new, but the statutory obligation of the secured creditor, as the owner of the property under Section 13(6) and (7) of the SARFAESI Act, read with Rules 8 (7) (a) and (f), Rules 9 (7) (9) and (10) of the SI (E) Rules, 2002 with a liability to transfer a clear and marketable title, as the seller.

43. Mr. Dawda, learned Counsel for the petitioner, further invites our attention to the judgment of the Hon'ble Apex Court in the case of *The Maharashtra State Co- operative Bank Ltd. / Babulal lade and Ors.* (2020) 2 SCC 310, to contend that the respondent No.3/ Bank, would be liable to pay the dues of the respondent No.2, from and out of the sale proceeds, of the auction. The contention is misconceived, for the reason that in *Babulal Lade (supra)* the direction for the Bank to pay the employees dues, as per the recovery certificate issued by the Industrial Court, out of the sale proceeds from the auctioned property, was due to the stipulation as contained in the letter dated 8/3/2010, under which the Bank had undertaken the responsibility for employees dues and not otherwise. There is no such undertaking by the respondent No.3, in the present matter.

44. Thus even in the present case, the dues as claimed by the respondent No.2, being a charge on the property, under Section 37(1) of MVAT Act, 2002, and the property having stood

attached by the respondent No.2, before the auction, the petitioner, would be liable to pay the same to the respondent No.2, in order to obtain a clear and marketable title to the property, having purchased the same on 'As is where is and whatever there is basis'. In case the petitioner discharges the aforesaid dues of the respondent No.2, it would then be entitled to a no dues certificate from the respondent No.2.”

51. Therefore on a perusal of the judgment of the Bombay High Court, it is categoric and clear that in unequivocal terms, it is held that the dues being a charge on the property as per the provisions of the Maharashtra Value Added Tax Act, 2002 and the property having stood attached by the revenue authorities before the auction, the purchaser of the property would be liable to pay the amount due under the encumbrance so as to secure a clear and marketable title to the property.

52. Learned Special Government Pleader further invited our attention to the order of the Hon’ble Apex Court in SLP (C) No. 10919 of 2021 considered along with Civil Appeal No. 6350 of 2021. Civil Appeal No. 6350 of 2021 is filed by Kotak Mahindra Bank Ltd. who was not a party to the **Medineutrina Pvt. Ltd.** (supra) challenging the general directions extracted above, after securing leave from the

Hon'ble Apex Court, which is informed to be pending consideration. Whereas SLP (C) No. 10919 of 2021 is filed by the aggrieved party in **Medineutrina** (supra) and as per an order dated 18.11.2021, the said Special Leave Petition was dismissed. In order to have a proper appreciation of the order passed in the Special Leave Petition and ascertain its implication as a binding precedent, it is better that the said order is extracted:-

“Much ado was made by the learned counsel for the petitioner on the basis of observations made by the High Court in paragraphs 26 and 27 of the impugned judgment. Those observations, in our opinion, are not a positive finding of fact in favour of the petitioner that the petitioner had no constructive notice as such.

It is not necessary for us to examine the other aspects dealt with by the High Court in the impugned judgment. For, the agreement executed by the petitioner pursuant to which the auction was concluded in favour of the petitioner reads thus:-

“16. All statutory dues/attendant charges/other dues, including registration charges, stamp duty, taxes, any other known, Unknown liability, expenses, property tax, any other dues of the Govt. or anybody in respect of properties/assets sold, shall have to be borne by the purchaser.

17. The sale certificate shall be issued in the same name in which the Bid is submitted.

18. Any other encumbrances known to the Bank is not known. The Authorized office or the Bank shall not be responsible for any charge, lien, encumbrances, or any other dues to the Government or anyone else in respect of properties E-auction. The intending bidders should make discreet enquiries as regards to the property from any authorities besides the bank's charges and satisfy themselves about the title extent of the property, any of the bank's charges and satisfy themselves about the title extent of the property, any statutory liabilities, arrear of property tax before submitting the bid. No claim of whatsoever nature regarding the property put for sale, encumbrance over the property on any other matter will be entertained after submission of the online bid.”

Having agreed to these stipulations, it is too late in the day for the petitioner to contend that the petitioner would not be liable to pay the statutory dues so as to remove the charge on the property in question in that regard.

The argument of the petitioner is that the charge is not in respect of the property as such, but is the consequence of the statutory dues. That makes no difference. The fact remains that there is first charge of the State on the property in respect of the statutory dues.

Having agreed to the terms referred to above, it is not open for the petitioner to resile from the liability to discharge the same in connection with the first charge of the State on the property in question.

Hence, this special leave petition is dismissed for the

reasons mentioned above. Thus, we uphold the decision of High Court in rejecting writ petition and reliefs claimed by the petitioner.

We accede to the request of the counsel for the petitioner that after the petitioner pays the sales tax dues, a fresh sale certificate be issued by the Bank in favour of the petitioner. That request be considered by the Bank appropriately.”

53. The contention advanced by the learned Special Government Pleader is that the Special Leave Petition was dismissed by the Hon’ble Apex Court by declaring the law that there is a first charge of the State on the property in respect to the statutory dues and therefore it is a binding precedent liable to be followed under Article 141 of the Constitution of India by all courts in India.

54. Learned Special Government Pleader has also invited our attention to the judgment of a Division Bench of this Court in **Travancore Devaswom Board v. Local Fund Audit [2020 (3) KLT 296]**, wherein taking into account Sections 26E of the SARFAESI Act, 2002 and 31B of the RDB Act, 1993 it was held that the provisions of Section 38 of KVAT Act, 2003 cannot have overriding effect on the provisions of the SARFAESI Act, 2002 and the RDB Act, 1993 by

virtue of Articles 246 and 254(1) of the Constitution of India. However, it is submitted that RP No. 432 of 2020 seeking to review the said judgment is filed by the State, which is admitted and pending consideration before this court.

55. Learned Special Government Pleader has invited our attention to the judgment of a Three Judge Bench of the Hon'ble Apex Court in **State Bank of Bikaner and Jaipur v. National Iron & Steel Rolling Corporation and Others [(1995) 2 SCC 19]** wherein it was held that when a statutory first charge is created on the property of the dealer, the property subjected to the first charge is the entire property of the dealer and the interest of the mortgagee is not excluded from the first charge and therefore the charge so created as per the provisions of the Rajasthan Sales Tax Act, 1994 will operate on the property as a whole and not on the equity of redemption alone. It was also held in the said judgment that a charge is a wider term than a mortgage and it would cover within its ambit a mortgage also; and therefore when a first charge is created by the operation of law over any property, that charge will have precedence over an existing mortgage.

56. Learned Special Government has also pressed into service

the judgment of the Three Judge Bench of the Hon'ble Apex Court in **Central Bank of India v. State of Kerala and Others [(2009) 4 SCC 94]** which considered the unamended provisions of the RDB Act, 1993 and the SARFAESI Act, 2002, (before introduction of Chapter IV-A to the SARFAESI Act 2002 came into force with effect from 01.09.2016) vis-a-vis among others, Section 26B of the KGST Act, 1963.

57. After making a threadbare survey of the earlier judgments of the Hon'ble Apex Court and the various provisions of law, has held that what is more significant to be noted is that there is no provision either in the RDB Act, 1993 and the SARFAESI Act, 2002 by which first charge has been created in favour of Banks, financial institutions or secured creditors qua the property of the borrower.

58. According to the learned Special Government Pleader, irrespective of the amendment made to the SARFAESI Act, 2002 and the RDB Act 1993, and introduction of Section 26E and 31B respectively the findings rendered by the Hon'ble Apex Court as above in **Central Bank of India** (supra), would still hold the field.

59. In **Central Bank of India** (supra), the Hon'ble Apex Court further discussed and held that if the Parliament intended to give

priority to the dues of Banks, financial institutions and other secured creditors over the first charge created under State Legislations then provisions similar to those contained in Section 14A of the Workmen's Compensation Act, 1923, Section 11(2) of the EPF Act, 1952, Section 74(1) of the Estate Duty Act, 1953, Section 25(2) of the Mines and Minerals (Regulation and Development) Act, 1957, Section 30 of the Gift Tax Act, 1958 and Section 529-A of the Companies Act, 1956 would have been incorporated in the DRT Act and the SARFAESI Act, 2002.

60. The sum and substance of the contention therefore advanced by the learned Special Government Pleader is that the findings rendered by the Hon'ble Apex Court in **Central Bank of India** (supra) is clearly applicable to the cases on hand.

61. Anyhow, it is important to note that the Hon'ble Apex Court has held in **Central Bank of India** (supra) that in none of the judgments pointed out by the financial institutions in the said case, held that by virtue of the provisions contained in the DRT Act or the SARFAESI Act, 2002, first charge has been created in favour of Banks, financial institutions etc., and further that in none of the

judgments, either called upon nor it decided competent priorities of statutory first charge created under Central Legislations (S) on the one hand and State Legislations (S) on the other, nor it proved that statutory first charge created under a State Legislation is subservient to the dues of Banks, financial institutions etc., even though statutory first charge has not been created in their favour.

62. It was finally held therein that the High Court was right in holding that the Tahsildar was entitled to give effect to the primacy of statutory first charge created on the property of the dealer under Section 26B of the KGST Act, 1963; and therefore held that the State has got prior charge over the property of the dealer and there is no valid ground to interfere with the order passed by the Division Bench of this Court.

63. It is also the contention of the learned Special Government Pleader as well as the learned Senior Government Pleader appearing for the revenue that there is no conflict by and between the provisions of the KGST Act, 1963 and the KVAT Act, 2003 with the provisions of the SARFAESI Act, 2002 and the RDB Act, 1993 and the Rules thereto.

64. In order to establish the said contention, the judgments of the Hon'ble Apex Court in **Kerala State Electricity Board v. Indian Aluminum Co. Ltd. [(1976) 1 SCC 466]**; **Hoechst Pharmaceuticals Ltd. v. State of Bihar and Others [(1983) 4 SCC 45]**; **Pandurang Ganpati Chaugule v. Vishwasrao Patil Murgud Sahakari Bank Limited [(2020) 9 SCC 215]**; and the Full Bench judgment of this Court in **Pushpangadan v Federal Bank Ltd. [2011 (4) KLT 134 (FB)]** which dealt with the provisions of SARFAESI Act, 2002 and the Kerala Buildings (Lease and Rent Control) Act, 1965, and other judgments were relied upon.

65. Our attention was also drawn to the judgment of a Three Judge Bench of the Hon'ble Apex Court in **Bank of Maharashtra v. Pandurang Keshav Gorwardkar and Others [(2013) 7 SCC 754]** which considered the question of the RDB Act, 1993 and Section 529A and 529(1) etc. of the Indian Companies Act, 1956 and held that a cumulative reading of Section 529A and 529(1) proviso leads to an irresistible conclusion that where a company is in liquidation, a statutory charge is created in favour of workman in respect of their dues over the security of every secured creditor and this charge is in

pari passu with that of the secured creditor; such statutory charge is to the extent of workman's portion in relation to the security held by the secured creditor of the company; the said position is equally applicable where the assets of the company have been sold in execution of the recovery certificate obtained by the Bank or financial institution against the debtor company when it was not in liquidation but before the proceeds realized from such sale could be fully and finally disbursed, the company had gone into liquidation; and stated differently pending final disbursement of the proceeds realized from the sale of security in execution of the recovery certificate issued by the DRT, if debtor company becomes company in winding up, Section 529A and 529(1) proviso come into operation immediately and statutory charge is created in favour of workman in respect of their dues over such proceeds.

66. The said judgments considered elaborately the intricacies of conflict by and between a Central Law and a State Law and basically held that if there is a direct conflict by and between a Central Law and a State Law vis-a-vis the Entries contained under List I and List III, the Central Law would prevail.

67. In view of the contention advanced by the learned counsel for the Bank / Financial institutions, Sri. S. Easwaran and Sri. Mohan Jacob George that the dismissal of the SLP in **Medineutrina** (supra) is not a precedent binding this Court under Article 141 of the Constitution of India, learned Special Government Pleader has invited our attention to the judgment of a Three Judge Bench of the Hon'ble Apex Court in **Khoday Distilleries Limited v. Sri. Mahadeshwara Sahakara Sakkare Karkhane Limited [(2019) 4 SCC 376]** which held as follows:-

“26. From a cumulative reading of the various judgments, we sum up the legal position as under:

26.1. The conclusions rendered by the three-Judge Bench of this Court in Kunhayammed and summed up in para 44 are affirmed and reiterated.

26.2. We reiterate the conclusions relevant for these cases as under:

"(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC.”

68. In **Kunhayammed v. State of Kerala [(2000) 6 SCC 359]** a

Three Judge Bench of the Hon'ble Apex Court had occasion to consider the doctrine of merger, binding precedent under Article 141 vis-a-vis Articles 132 to 136 and the Supreme Court Rules. The issue with respect to dismissal of Special Leave Petition by speaking or reasoned order was considered by the Hon'ble Apex Court in the said judgment and held as follows:-

“27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e. it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the court or

tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the apex court of the country. No court or tribunal or parties would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The Court sometimes leaves the question of law open. Or it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court.

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31. In Supreme Court Employees Welfare Associations case (supra), this Court held :-

“When Supreme Court gives reasons while dismissing a special leave petition under Article 136 the decision becomes one which attracts Article 141. But when no reason is given and the special leave petition is summarily dismissed, the Court does not lay down any law under Article 141. The effect of a non-speaking order of dismissal of a special leave petition without

anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that the Supreme Court had decided only that it was not a fit case where special leave petition should be granted.”

69. It was held therein that the law stated or declared by the Hon’ble Apex Court in its order shall attract applicability of Article 141 of the Constitution. It was also held that the reasons assigned in the order expressing its adjudication (expressly or by necessary implication) on point of fact or law shall take away the jurisdiction of any other court, tribunal or authority to express any opinion in conflict with or in departure from the view taken by the court because permitting to do so would be subversive of judicial discipline and an affront to the order of the court.

70. In **Kapico Kerala Resorts (P) Ltd. v. State of Kerala [(2020) 3 SCC 18]** the question with respect to the binding precedent under Article 141 and doctrine of merger was considered by the Hon’ble Apex Court and held as follows:-

“24. As pointed out by this Court in [Kunhayammed v. State of Kerala](#) [Kunhayammed v. State of Kerala, (2000) 6 SCC 359], there is a distinction between the dismissal of a special

leave petition by a non-speaking order where no reasons are recorded and the dismissal of a special leave petition by a speaking or reasoned order. In both cases, the doctrine of merger would not apply. But in cases falling under the latter category, the reasons stated by the Court would attract the applicability of Article 141 of the Constitution, if a point of law has been declared therein. If what is stated in the order of the Supreme Court (before the grant of leave) happen to be findings recorded by the Supreme Court, not amounting to a declaration of law, the findings so recorded would bind only the parties thereto. Though the views expressed in *Kunhayammed* [*Kunhayammed v. State of Kerala*, (2000) 6 SCC 359] were thought of to be in conflict with the views expressed in certain other decisions [*Abbai Maligai Partnership Firm v. K. Santhakumaran* (*Abbai Maligai Partnership Firm v. K. Santhakumaran*, (1998) 7 SCC 386), and the issue was referred [*Khoday Distilleries Ltd. v. Mahadeswara S.S.K. Ltd.*, (2012) 12 SCC 291: (2013) 4 SCC (Cri) 649 : (2013) 3 SCC (L&S) 450] to a larger Bench for an authoritative pronouncement, this Court has now clarified in *Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.* [*Khoday Distilleries Ltd. v. Sri. Mahadeshwara Sahakara Karkhane Ltd.*, (2019) 4 SCC 376], that *Kunhayammed* [*Kunhayammed v. State of Kerala*, (2000) 6 SCC 359] lays down the correct law.”

71. Accordingly, it is contended by the State that the declaration of law made by the Hon’ble Apex Court in the order in SLP (C) No.

10919 of 2021 dated 18.11.2021 that there is first charge of the State on the property in respect of the statutory dues is a binding precedent and therefore the appeals have to be allowed on the said sole ground.

72. On the other hand, learned counsel for the Bank / financial institutions submitted that the judgment of the Hon'ble Apex Court in **Central Bank of India** (supra) would not apply to the facts and circumstances of the case since the said judgment was rendered prior to the introduction of Chapter IV-A in the SARFAESI Act, 2002. According to the learned counsel, the judgment rendered by the Division Bench of this Court in **Travancore Devaswom Board** (supra) of coequal strength is binding on this Court, and therefore, if there is any doubt with respect to the proposition of law laid down in the said judgment, the matter may be referred to a Larger Bench for consideration.

73. Furthermore, it is contended that the Rules 2002 would not reconcile with Section 26E of the SARFAESI Act, 2002, and therefore, reliance placed by the learned Special Government Pleader as well as learned Senior Government Pleader on Sections 8 and 9 to canvass the preposition that the rule makes it clear that without

discharge of the encumbrances, a sale certificate cannot be issued, is unsustainable in law.

74. According to the learned counsel for the financial institutions, the provisions contained under the Social Welfare Legislations relied upon by the Hon'ble Apex Court in its various judgments to consider the question of statutory charge cannot be equated to the facts and circumstances of this case, since insofar as a mortgage is concerned, the Bank has no other alternative to recover its debts than to proceed against the properties mortgaged as per the provisions of the SARFAESI Act, 2002.

75. In order to advance contentions in that regard learned counsel for the Bank / financial institutions have invited our attention to the judgments of the Hon'ble Apex Court in **Employees Provident Fund Commissioner v. Official liquidator [(2011) 10 SCC 727]** and **Jitendra Nath Singh v. Official Liquidator and Others [(2013) 1 SCC 462]**. Learned counsel has also invited our attention to the judgment of the High Court of Gujarat in **Bank of India v. State of Gujarat and others [Manu/GJ/0130/2020]** which considered the question with respect to recovery proceedings initiated by the State

vis-a-vis the steps taken for sale as per the provisions of the SARFAESI Act, 2002 and the RDB Act, 1993.

76. Apparently, therein the question with respect to the application of the provisions of the State enactments creating first charge over the properties and the amended provisions contained under Chapter IV A of the SARFAESI Act, 2002 was considered, and according to the learned counsel, ultimately after discussion, it was held that the rights of a secured creditor to realize its secured debts due and payable by sale of assets over which security interest is created, would have priority over all Government debts and dues, including revenue and taxes due to the State Government.

77. However, on a reading of the said judgment, we are of the considered opinion that the Division Bench of the Gujarat High Court has only considered the question of the priority to realize the debt due at first in favour of the Bank by selling off the property.

78. So also, according to learned counsel Sri. S. Easwaran, the judgment of the Division bench of the Bombay High Court in **Medineutrina** (supra) may not be a good law in view of the full bench judgment of the Bombay High Court in W. P. (C) No. 2935 of 2018

dated 30.08.2022, Jalgaon Janta Sahakari Bank Ltd. and Another v. Joint Commissioner of Sales Tax, Nodal 9, Mumbai and Another; wherein the Full Bench of the Bombay High Court, after considering the issues elaborately, also taking into account the provisions of Chapter IV-A of the SARFAESI Act, 2002, has framed the following questions:-

“44. Keeping in view the rival submissions, we have considered it appropriate to formulate the following substantial questions of law for answers:

- a. Having regard to the statutory provisions under consideration, does a secured creditor (as defined in the SARFAESI Act and the RDDB Act) have a prior right over the relevant department of the Government [under the BST Act/MVAT Act/MGST Act] to appropriate the amount realized by the sale of a secured asset?
- b. Whether, despite section 26E in the SARFAESI Act or section 31B of the RDDB Act being attracted in a given case, dues accruing to a department of the Government ought to be repaid first by reason of ‘first charge’ created over any property by operation of law (viz. the legislation in force in Maharashtra) giving such dues precedence over the dues of a secured creditor?
- c. Are the provisions, inter alia, according ‘priority’ in

payment of dues to a secured creditor for enforcing its security interest under the provisions of the SARFAESI Act prospective?

d. Whether section 31B of the RDDB Act can be pressed into service for overcoming the disability that visits a secured creditor in enforcing its security interest under the SARFAESI Act upon such creditor's failure to register the security interest in terms of the amendments introduced in the SARFAESI Act?

e. Whether the priority of interest contemplated by section 26E of the SARFAESI Act could be claimed by a secured creditor without registration of the security interest with the Central Registry? Depending on the answer to this question, whether correct proposition of law has been laid down (extracted infra) in paragraph 21 of the Division Bench decision reported in 2020 (2) Bom. C. R. 243 (OS) [**ASREC (India) Limited vs. State of Maharashtra and Ors.**] and in paragraph 35 of the Division Bench decision, reported in 2021 (2) Mh. LJ 721 (**State Bank of India vs. the State of Maharashtra and Ors.**)?

f. When, and if at all, can it be said that the statutory first charge under the State legislation, viz. the BST Act, the MVAT Act and the MGST Act, as the case may be, stands displaced having regard to introduction of Chapter IV-A in the SARFAESI Act from 24th January 2020?

and

g. Whether an auction purchaser of a secured asset would be liable to pay the dues of the department in order to obtain a clear and marketable title to the property having purchased the same on “as is where is and whatever there is basis”?

79. Therefore on a reading of the questions framed, it is clear that the Full Bench considered the question whether the statutory first charge under the State Legislation namely the Bombay Sales Tax Act, 1959, the Maharashtra Value Added Tax Act, 2002 and the Maharashtra General Sales Tax Act, would be displaced having regard to introduction of Chapter IV-A in the SARFAESI Act, 2002, and whether an auction purchaser of a secured asset would be liable to pay the dues of the department in order to obtain a clear and marketable title to the property having purchased the same on “As is where is”, “As is what is” and “Whatever there is” condition.

80. After considering the intricate issues vis-a-vis the provisions of SARFAESI Act, 2002 and the State Legislations creating first charge framed as per questions ‘f’ and ‘g’, it is held as follows:-

“161. We, therefore, answer this question by observing that notwithstanding the duty of the authorized officer to indicate in the sale advertisement inviting bids the encumbrance(s)

attached to the immovable property, *i.e.*, the secured asset, as known to the secured creditor, if at all any detail in regard to such encumbrance(s) is not indicated by the sale is expressly made on “*as is where is, whatever there is basis*”, the transferee shall be duty bound to deposit money for discharge of the encumbrance(s) provided, of course, that such liability may be overcome if he is in a position to disprove the claim of the department that he had no constructive notice of the charge, far less actual notice.”

81. Such a finding was rendered by the Bombay High Court also taking into account the mandatory requirements contained under the Rules 2002 and finding that the requirements contained under the Rules are to be scrupulously followed failing which, without terminating the encumbrances caused, an encumbrance free sale certificate cannot be issued.

82. That apart, priority is defined under the Black’s Law Dictionary Sixth Edition as follows:-

“**Priority.** Precedence, going before. A legal preference or precedence. The relative ranking of competing claims to the same property. When two persons have similar rights in respect of the same subject-matter, but one is entitled to exercise his right to the exclusion of the other, he is said to have priority. The order in which claims may be satisfied out of the sale of real property or

other assets (*see eg. Mortgage (First mortgage)*). *See also* Preferential debts.

In bankruptcy, refers to secured claims that by statute receive more favorable treatment than other unsecured claims. In a Bankruptcy Code Chapter 7 distribution, priority claims must be paid first. In a Chapter 11 plan, priority claims must be paid in full.”

83. In **Telangana State Southern Power Distribution Company Limited and Another v. Srigdhaa Beverages [(2020) 6 SCC 404]**, the Hon’ble Apex Court had occasion to consider the effect of ‘as is where is, what is there is and without recourse basis’, taking into account the contents of the sale notice therein and held as follows:-

“4. The aforesaid auction notice shows that the unit was being sold on “as is where is, what is there is and without any recourse basis”, as per Rules 8 & 9 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the ‘said Rules’). The aforesaid clauses of the e-auction sale notice show that the total outstanding dues were much larger, but the reserve price fixed was lower, and the actual sale consideration of the successful auctioneer was Rs.9,18,65,000, which is approximately Rs.10 lakh more than the minimum reserve price. Clause 24 reproduced aforesaid makes it clear that when the

reference is to a sale on “as is where is, what is there is and without any recourse basis”, the same is “in all respects and subject to statutory dues”. This clause was further subject to another Clause 26, where the Authorised Officer carrying out the auction absolved himself of the liability for any charge, lien, encumbrance, property tax dues, electricity dues, etc. The purpose is to emphasise that a holistic reading of all these clauses left little in doubt that the auction notice provided for a reserve price, with a bid being made about Rs.10 lakh over and above that, and certain nature of charges, lien, encumbrances, including electricity dues were clearly beyond the sale consideration paid.”

84. We have evaluated the rival submissions made across the bar.

85. Taking into account the provisions discussed above; the judgments in **Central Bank of India** (supra); the judgment of the Division Bench of Bombay High Court in **Medineutrina** (supra); the Full Bench decision of the Bombay High Court in *Jalgaon Janta Sahakari Bank Ltd. and Another v. Joint Commissioner of Sales Tax, Nodal 9, Mumbai and Another* referred to above, to which we are in respectful agreement; and the dismissal of the Special Leave Petition filed from **Medineutrina** (supra) with the declaration that the State has the first charge over the property in respect of the statutory dues; we

are of the considered opinion that the law as it stands today, the State has first charge over the property and the charge runs with the property irrespective of the sale conducted by the financial institutions as per the provisions of the SARFAESI Act, 2002 and the RDB Act, 1993 and the debts are adjusted in priority; in spite of the amendments made to the Acts above. True, the aforesaid acts being central legislations, and going by the rules in vogue, the financial institutions have the right to conduct sale of the secured assets in accordance with law and adjust the amounts due in priority to other debts, but the statutory charge under the state laws would continue to run with the property.

86. To put it otherwise, if and when any amounts have fallen due as per the provisions of the KGST Act, 1963 and the KVAT Act, 2003 and the proceedings start, consequent to which a charge is created on the properties of the assessee and the said charge created would continue to run with the property even if the Banks / financial institutions conduct the sale to recover the amounts due under the mortgage.

87. It is quite clear and evident from Section 26E of the SARFAESI Act 2002 that it creates only a priority in favour of the

financial institutions in the matter of payment over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or the State Government or local authority. But the priority in payment is in no manner in conflict with the first charge created over the properties as per the provisions of the KGST Act, 1963, and the KVAT Act, 2003.

88. It is important to note that Chapter IV-A was incorporated into the SARFAESI Act, 2002 by amending the said Act on and with effect from 01.09.2016 and if the Parliament intended that the Bank / financial institutions should be given the first charge over any first charge created by the State enactments, it could have stated so in the amended provisions. Still, it has only been chosen that the Bank or financial institutions have priority in the matter of payment of debts over other debts. The said aspect has no manner of repugnancy vis-a-vis the provisions of the State enactments. Which thus means, even if the Bank sells the properties and adjusts the payment due to it first, even then, until the encumbrances consequent to the first charge created as per the statutes referred to above is cleared, the charge runs with the property.

89. Moreover, Section 26E states only the nature of the priority for payment; whereas Rules 8 and 9 of Rules 2002 deals with the manner in which the sale of the secured assets to be carried out, and which makes it specific how a notice is to be issued; how an encumbrance is to be removed; how a delivery of the property is to be effected to the purchaser free from encumbrances known to the secured creditor; and how a sale certificate is to be issued free of encumbrances.

90. Even though contentions are advanced by learned counsel for the Bank / financial institutions that the said provisions of the Rules 2002 is in conflict with Section 26E, we are unable to agree with the same because the provisions of the Rules 2002 is intended to translate the true spirit of the SARFAESI Act, 2002 and to ensure that a purchaser coming forward to purchase a property offered by the Banks / financial institutions, make due inquiries concerning any encumbrance created over the property and thereby protect his interest.

91. There is no case for the Banks / financial institutions that the notices were given by the Bank after making due enquiries with respect to any encumbrance or that the purchasers have come forward

to purchase the property after making due enquiries with respect to any encumbrance on the property.

92. This is more so when Section 3 of the TP Act, 1882 discussed above makes it clear that any negligent act on the part of a purchaser of a property to make due enquiries would be deemed to be a proper notice in regard to the encumbrances against the property.

93. Moreover, we have gone through the parliamentary discussions about the amendment of the SARFAESI Act 2002 and the RDB Act 1993; and from the discussions and deliberations what we could gather was only as to how the Bank has to be paid first the amounts due to it under a mortgage. Therefore under no circumstances it can be legally presumed that the parliament ever thought of realising the amounts due under a mortgage giving an absolute go by to the statutory charge created by the Central and State enactments. That apart since Section 26E makes it clear that the Bank is entitled only for a priority in payment alone, it can never be said to be a charge created over the property against the statutory charge contained under the KGST Act, 1963 and the KVAT Act, 2003 or any Central enactment.

94. In our view, this would be more clear from the explanation

contained under Section 26E which states that 'for the purpose of the said Section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code. The above is a clear indication that it cannot be said that merely because a priority in payment is available to the financial institutions, the statutory charge created under various enactments vanishes.

95. Considering the entire gamut of the issue and the deliberations made above, we are of the considered opinion that interference is required to the common judgment of the learned Single Judge.

96. Accordingly, the writ appeals are allowed. Therefore we hold that the statutory charge created as per the provisions of the KGST Act, 1963 and the KVAT Act, 2003, prior to any mortgage made, against the dealers would remain intact, even if the property is sold by the Bank, by the rights conferred under Section 26E of the SARFAESI Act, 2002, and Section 31B of the RDB Act 1993 read with the Rules

to it, till such time the encumbrances are cleared as per the provisions of the said enactments and the rules thereto.

97. Which thus means, if the mortgage is created after the amounts have fallen due as per the provisions of the KGST Act, 1963 and the KVAT Act, 2003 and accordingly, proceedings are initiated, such a mortgage can only be termed as subject to a statutory charge as per Sections 26B and 38 of Act 1963 and the Act 2003 respectively.

In view of the above findings, the writ petitions filed by the Banks / financial institutions etc. will stand dismissed.

It is made clear that vide a separate order, I. A. Nos. 3 and 2 of 2022 filed by the appellant in W. A. Nos. 620 and 652 of 2022 respectively, to accept certain documents with respect to the action initiated against the party respondents /writ petitioners, are allowed.

Sd/-
S. MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P. CHALY
JUDGE

Eb

///TRUE COPY/// P. A. TO JUDGE

APPENDIX OF WA 2449/2019

PETITIONER ANNEXURES

- ANNEXURE A7(A) TRUE COPY OF THE DEALERS DATA SHEET IN RESPECT OF M/S ERNAKULAM TOURIST BUNGALOW KEPT BY THE KERALA COMMERCIAL TAXES DEPARTMENT**
- ANNEXURE A7(B) SHOP INSPECTION REPORT NO. 215249 DATED 23.09.2010 PREPARED BY THE INTELLIGENCE OFFICER, SQUAD NO. II, COMMERCIAL TAXES, ERNAKULAM**
- ANNEXURE A7(C) SHOP INSPECTION REPORT NO. 215250 DATED 23.09.2010 PREPARED BY THE INTELLIGENCE OFFICER, SQUAD NO. II, COMMERCIAL TAXES, ERNAKULAM**
- ANNEXURE A7(D) FORM NO. 17 NOTICE DATED 29.12.2010 IN ISE NO 17 & 18/10-11 ISSUED BY THE INTELLIGENCE OFFICER, SQUAD NO. II, COMMERCIAL TAXES, ERNAKULAM**
- ANNEXURE A7(E) ORDER NO. ISE-II/17/2010-11 DATED 31.12.2015 ISSUED BY THE INTELLIGENCE OFFICER, SQUAD NO. II, COMMERCIAL TAXES, ERNAKULAM**
- ANNEXURE A7(F) ORDER NO. ISE-II/18/2010-11 DATED 31.12.2015 ISSUED BY THE INTELLIGENCE OFFICER, SQUAD NO. II, COMMERCIAL TAXES, ERNAKULAM**

RESPONDENT ANNEXURES

- ANNEXURE R1(A) COPY OF THE INTERIM ORDER DATED 14/8/2018 IN W.P.(C) NO:19371/2017 OF THIS HONOURABLE COURT**
- ANNEXURE R1(B) COPY OF THE INTERIM ORDER DATED 08/02/2019 IN W.P (C)NO :19371/2017 OF THIS HONOURABLE COURT**

APPENDIX OF WA 1655/2021

PETITIONER ANNEXURES

ANNEXURE A1	TRUE COPY OF THE JUDGMENT IN REVIEW PETITION NO.525/2021.
ANNEXURE II	TRUE COPY OF THE INTERIM ORDER DATED 02.09.2021 IN WRIT APPEAL NO.1096/2021.

APPENDIX OF WA 620/2022

RESPONDENT ANNEXURES

- ANNEXURE R1(A)** TRUE COPY OF THE SANCTION LETTER DATED 22/09/2008 ISSUED BY THE BRANCH MANAGER, CATHOLIC SYRIAN BANK LTD, KOLLAM BRANCH TO THE LOANEE
- ANNEXURE R1(B)** TRUE COPY OF THE CONFIRMATION LETTER DATED 29/09/2008 SIGNED BY THE LOANEE IN FAVOUR OF THE BRANCH MANAGER, CATHOLIC SYRIAN BANK LTD, KOLLAM BRANCH
- ANNEXURE R1(C)** TRUE COPY OF THE SANCTION LETTER DATED 16/11/2009 ISSUED BY THE BRANCH MANAGER, CATHOLIC SYRIAN BANK LTD, KOLLAM BRANCH TO THE LOANEE
- ANNEXURE R1(D)** TRUE COPY OF THE CONFIRMATION LETTER DATED 16/11/2009 SIGNED BY THE LOANEE IN FAVOUR OF THE BRANCH MANAGER, CATHOLIC SYRIAN BANK LTD, KOLLAM BRANCH
- ANNEXURE R1(E)** TRUE COPY OF THE ASSESSMENT ORDER DATED 25/11/2013 UNDER THE KERALA VALUE ADDED TAX IN RESPECT OF THE FINANCIAL YEAR 2008-2009
- ANNEXURE R1(F)** TRUE COPY OF THE CST ASSESSMENT ORDER DATED 30/07/2013 IN RESPECT OF THE FINANCIAL YEAR 2008-2009
- ANNEXURE R1(G)** TRUE COPY OF DETAILS OF THE REGISTRATION OF THE MORTGAGED PROPERTIES WITH THE CENTRAL REGISTRY OF SECURITISATION ASSET RECONSTRUCTION AND SECURITY INTEREST OF INDIA

PETITIONER ANNEXURES

- ANNEXURE -A1(A)** TRUE COPIES OF THE RETURNS FILED BY THE DEALER FOR THE PERIOD FROM APRIL 2008 TO AUGUST 2008.
- ANNEXURE -A1(B)** TRUE COPY OF THE ASSESSMENT ORDER DATED 30.07.2013 PASSED BY THE COMPETENT ASSESSING AUTHORITY UNDER RULE 6(5) OF THE CENTRAL SALES TAX (KERALA) RULES, 1957.
- ANNEXURE -A1(C)** TRUE COPY OF THE NOTICE OF ATTACHMENT ISSUED UNDER SECTION 36 OF THE KERALA REVENUE RECOVERY ACT, 1968.
- ANNEXURE -A1(D)** TRUE COPY OF THE ENGLISH TRANSLATION OF ANNEXURE-A1(C).
- ANNEXURE -A1(E)** TRUE COPY OF THE PROHIBITORY ORDER

- DATED 21.12.2013 ISSUED UNDER THE KERALA REVENUE RECOVERY ACT, 1968.**
- ANNEXURE-A1(F) :** **TRUE COPY OF THE ENCUMBRANCE CERTIFICATE ISSUED BY THE 3RD APPELLANT.**
- ANNEXURE-A1(G)** **TRUE COPY OF THE ENGLISH TRANSLATION OF ANNEXURE-A1(F).**
- ANNEXURE-A1(H)** **TRUE COPY OF THE LETTER DATED 04.01.2014 ISSUED BY THE TAHSILDAR (RR), KOLLAM TO CATHOLIC SYRIAN BANK AND STATE BANK OF INDIA.**
- ANNEXURE-A1(I)** **TRUE COPY OF THE REPLY DATED 10.01.2014 OF M/S. CATHOLIC SYRIAN BANK LTD.**
- ANNEXURE-A1(J)** **TRUE COPY OF THE REPLY DATED 20.01.2014 SENT BY THE TAHSILDAR (RR), KOLLAM TO THE CATHOLIC SYRIAN BANK LTD.**

APPENDIX OF WA 652/2022

RESPONDENT ANNEXURES

- ANNEXURE R1 (A)** TRUE COPY OF THE SANCTION LETTER DATED 22/092008 ISSUED BY THE BRANCH MANAGER, CATHOLIC SYRIAN BANK LTD, KOLLAM BRANCH TO THE LOANEE
- ANNEXURE R1(B)** TRUE COPY OF THE CONFIRMATION LETTER DATED 29/09/2008 SIGNED BY THE LOANEE IN FAVOUR OF THE BRANCH MANAGER, CATHOLIC SYRIAN BANK LTD, KOLLAM BRANCH
- ANNEXURE R1(C)** TRUE COPY OF THE SANCTION LETTER DATED 16/11/2009 ISSUED BY THE BRANCH MANAGER, CATHOLIC SYRIAN BANK LTD, KOLLAM BRANCH TO THE LOANEE
- ANNEXURE R(D)** TRUE COPY OF THE CONFIRMATION LETTER DATED 16/11/2009 SIGNED BY THE LOANEE IN FAVOUR OF THE BRANCH MANAGER, CATHOLIC SYRIAN BANK LTD, KOLLAM BRANCH
- ANNEXURE R1(E)** TRUE COPY OF THE ASSESSMENT ORDER DATED 25/11/2013 UNDER THE KERALA VALUE ADDED TAX IN RESPECT OF THE FINANCIAL YEAR 2008-2009
- ANNEXURE R1(F)** TRUE COPY OF THE CST ASSESSMENT ORDER DATED 30/07/2013 IN RESPECT OF THE FINANCIAL YEAR 2008-2009
- ANNEXURE R1(G)** TRUE COPY OF DETAILS OF THE REGISTRATION OF THE MORTGAGED PROPERTIES WITH THE CENTRAL REGISTRY OF SECURITISATION ASSET RECONSTRUCTION AND SECURITY INTEREST OF INDIA

PETITIONER ANNEXURES

- ANNEXURE A1(A)** TRUE COPY OF THE NOTICE DATED 28.06.2006 ISSUED BY THE INTELLIGENCE INSPECTOR, SQUAD NO. II, KOLLAM TO THE DEALER.
- ANNEXURE A1(B)** TRUE COPY OF THE PENALTY ORDER NO. OR-63A/06-07 DATED 05.11.2009.
- ANNEXURE A1(C)** TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2006-07.
- ANNEXURE A1(D)** TRUE COPY OF THE NOTICE OF ATTACHMENT ISSUED UNDER SECTION 36 OF THE KERALA REVENUE RECOVERY ACT, 1968.
- ANNEXURE A1(E)** TRUE COPY OF THE ENGLISH TRANSLATION OF ANNEXURE-A1(D).
- ANNEXURE A1(F)** TRUE COPY OF THE PROHIBITORY ORDER

**ISSUED UNDER THE KERALA REVENUE RECOVERY
ACT, 1968.**

- ANNEXURE A1(G) TRUE COPY OF THE LETTER DATED 04.01.2014
ISSUED BY THE TAHSILDAR (RR), KOLLAM TO
THE CATHOLIC SYRIAN BANK SME BRANCH,
KOLLAM.**
- ANNEXURE A1(H) TRUE COPY OF THE REPLY RECEIVED FROM THE
CATHOLIC SYRIAN BANK DATED 10.01.2014.**
- ANNEXURE A1(I) TRUE COPY OF THE LETTER DATED 20.01.2014
ISSUED BY THE TAHSILDAR (RR), KOLLAM.**

APPENDIX OF WA 659/2022

RESPONDENT ANNEXURES

- ANNEXURE R1(A) TRUE COPY OF THE SANCTION LETTER DATED 22/092008 ISSUED BY THE BRANCH MANAGER, CATHOLIC SYRIAN BANK LTD, KOLLAM BRANCH TO THE LOANEE**
- ANNEXURE R1(B) TRUE COPY OF THE CONFIRMATION LETTER DATED 29/09/2008 SIGNED BY THE LOANEE IN FAVOUR OF THE BRANCH MANAGER, CATHOLIC SYRIAN BANK LTD, KOLLAM BRANCH**
- ANNEXURE R1(C) TRUE COPY OF THE SANCTION LETTER DATED 16/11/2009 ISSUED BY THE BRANCH MANAGER, CATHOLIC SYRIAN BANK LTD, KOLLAM BRANCH TO THE LOANEE**
- ANNEXURE R1(D) TRUE COPY OF THE CONFIRMATION LETTER DATED 16/11/2009 SIGNED BY THE LOANEE IN FAVOUR OF THE BRANCH MANAGER, CATHOLIC SYRIAN BANK LTD, KOLLAM BRANCH**
- ANNEXURE R1(E) TRUE COPY OF THE ASSESSMENT ORDER DATED 25/11/2013 UNDER THE KERALA VALUE ADDED TAX IN RESPECT OF THE FINANCIAL YEAR 2008-2009**
- ANNEXURE R1(F) TRUE COPY OF THE CST ASSESSMENT ORDER DATED 30/07/2013 IN RESPECT OF THE FINANCIAL YEAR 2008-2009**
- ANNEXURE R1(G) TRUE COPY OF DETAILS OF THE REGISTRATION OF THE MORTGAGED PROPERTIES WITH THE CENTRAL REGISTRY OF SECURITISATION ASSET RECONSTRUCTION AND SECURITY INTEREST OF INDIA**

APPENDIX OF WA 723/2022

PETITIONER ANNEXURES

ANNEXURE I	TRUE COPY OF THE ORDER DATED 02.09.2021 IN WA NO. 1096/2021
ANNEXURE II	TRUE COPY OF THE ORDER DATED 10.12.2021 IN WA NO. 1655/2021

APPENDIX OF WA 817/2022

PETITIONER ANNEXURES

ANNEXURE I	THE TRUE COPY OF THE ORDER DATED 02.09.2021 IN W.A. NO. 1096/2021.
ANNEXURE II	THE TRUE COPY OF THE ORDER DATED 10.12.2021 IN W.A. NO. 1655/2021.