



2025:KER:31719

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

WP(C) NO. 14656 OF 2025

PETITIONER:

UNION BANK OF INDIA,
ASSET RECOVERY BRANCH, UNION BANK BHAVAN,
M.G. ROAD, ERNAKULAM,
REP. BY ITS CHIEF MANAGER SURESH SACHIDANANDAN,
PIN - 682 035.

BY ADVS.

ASP.KURUP
SADCHITH.P.KURUP
C.P.ANIL RAJ
SIVA SURESH
ATHIRA VIJAYAN
B.SREEDEVI

RESPONDENTS:

- 1 P.B. MANAF,
S/O. LATE BASHEER,
PUTHIYEDATH HOUSE, THAIKKATTUKARA P O,
MUTTOM, ALUVA, ERNAKULAM DISTRICT,
PIN - 683 106.
- 2 P.K. BEEPATHU,
W/O. LATE BASHEER,
PUTHIYEDATH HOUSE, THAIKKATTUKARA PO, MUTTOM,
ALUVA, ERNAKULAM DISTRICT, PIN - 683 106.
- 3 P.B. ASHRAF,
PUTHIYEDATH HOUSE, THAIKKATTUKARA PO, MUTTOM,
ALUVA, ERNAKULAM DISTRICT, PIN - 683 106.
- 4 SAJNA MANAF,
W/O. P.B. MANAF,
PUTHIYEDATH HOUSE, THAIKKATTUKARA P O, MUTTOM,
ALUVA, ERNAKULAM DISTRICT, PIN - 683 106.



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- 5 P.B. ARAF,
S/O. LATE BASHEER,
PUTHIYEDATH HOUSE, THAIKKATTUKARA PO, MUTTOM,
ALUVA, ERNAKULAM DISTRICT, PIN - 683 106.
- 6 P.B. SHERIFF,
S/O. LATE BASHEER,
PUTHIYEDATH HOUSE, THAIKKATTUKARA P O, MUTTOM,
ALUVA, ERNAKULAM DISTRICT, PIN - 683 106.
- 7 P.B. SHAKEELA,
D/O. LATE BASHEER,
PUTHIYEDATH HOUSE, THAIKKATTUKARA P O, MUTTOM,
ALUVA, ERNAKULAM DISTRICT, PIN - 683 106.
- 8 P.H. MOHAMMED ALI,
S/O. HYDROSE,
PUTHIYEDATH HOUSE, THAIKKATTUKARA P O, MUTTOM,
ALUVA, ERNAKULAM DISTRICT, PIN - 683 106.

BY ADVS.

N.M.MADHU

C.S.RAJANI(K/2275/1999)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10.04.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

***‘C.R’*****JUDGMENT**

The petitioner, a banking company, is before this Court challenging Ext.P1 order of the Sessions Court, Ernakulam, in Crl.M.P.No.102/2025 in Crl.R.P.No.3/2025, through which the proceedings in M.C.No.198/2020 on the file of the Additional Chief Judicial Magistrate Court (MP's/MLA's of the State), Ernakulam, were stayed in a revision petition filed under the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'). According to the petitioner, M.C No.198/2020 is an application filed by the petitioner under the provisions of Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'), and since the Additional Chief Judicial Magistrate is not acting as a Criminal Court while exercising jurisdiction under Section 14 of the SARFAESI Act, the orders passed by the Additional Chief Judicial Magistrate are not amenable to be corrected in



revision by the Sessions Court. It is also the case of the petitioner that the proceedings before the Additional Chief Judicial Magistrate are only ministerial and there is no adjudication of the rights of parties in proceedings under Section 14 of the SARFAESI Act. It is submitted that in such circumstances, the respondents could not have challenged the orders of the Additional Chief Judicial Magistrate by filing a revision petition under Section 438 of the BNSS.

3. The learned counsel appearing for the respondents would submit that the application filed by the petitioner under Section 14 of the SARFAESI Act was originally dismissed and was thereafter restored, on application. It is submitted that the Additional Chief Judicial Magistrate has no power to restore an application filed under Section 14 of the SARFAESI Act. It is submitted that no provision of the BNSS or the Code of Criminal Procedure contemplates a power in the Additional Chief Judicial Magistrate to restore an



application dismissed for default. It is submitted that in such circumstances, the respondents were well within their rights to challenge the order of the Additional Chief Judicial Magistrate restoring M.C No.198/2020 on the application made by the petitioner bank. It is pointed out that the fact that M.C.No.198/2020 was dismissed and was later restored has not been disclosed in the writ petition. Finally, it is submitted that Ext.P1 order cannot be challenged by filing a writ petition under Article 226 of the Constitution of India.

4. The learned counsel for the petitioner would submit, in reply, that since the proceedings before the Additional Chief Judicial Magistrate are proceedings under Section 14 of the SARFAESI Act, any order passed by the Additional Chief Judicial Magistrate can only be challenged by approaching the Debts Recovery Tribunal by filing a Securitisation Application under Section 17 of the SARFAESI Act. It is submitted that the respondents/borrowers had no right to challenge the order



in a proceeding under Section 14 of the SARFAESI Act by filing a revision petition as has been done in the facts and circumstances of the case.

5. Having heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents, I am of the view that the petitioner is entitled to succeed. The jurisdiction exercised by the Chief Judicial Magistrate in a proceeding under Section 14 of the SARFAESI Act has been considered in various decisions of the Supreme Court¹, as also of this Court². The Magistrate exercising jurisdiction under Section 14 of the SARFAESI Act is exercising a statutory power under the provisions of the SARFAESI Act, and any order passed in exercise of that power can be challenged only by invoking the statutory remedy under Section 17 of the SARFAESI Act. Therefore, even assuming that the order of the learned Magistrate in restoring the application filed by the petitioner bank was illegal, the same could have been

¹See *Balkrishna Rama Tarle v. Phoenix ARC Pvt Ltd*; (2023) 1 SCC 662 and *R.D Jain and Co. v. Capital First Ltd.*; 2022 (5) KLT 361 (SC)

²See *State Bank of India v. Chief Judicial Magistrate*; 2021 (6) KLT 72 and *Canara bank v. Sachin Shyam*; (2023) 1 KLT 387



challenged only by filing an application under Section 17 of the SARFAESI Act, and no revision is maintainable under the provisions of the BNSS.

6. Coming to the contention of the learned counsel appearing for the respondents that a writ petition under Article 226 of the Constitution of India is not maintainable to challenge Ext.P1 order, it is settled that mere description or the nomenclature of a petition filed does not determine the nature of jurisdiction that may be exercised by this Court³. It is well within the jurisdiction of this Court under Article 227 of the Constitution of India to set aside an order of any Court subordinate to it where this Court is of the opinion that the Court subordinate to it has exercised a jurisdiction not vested in it. Here, I am clear in my mind that the exercise of the power of revision by the Sessions Court was not warranted for reasons already indicated. Therefore, I have no hesitation to set aside Ext.P1 in the exercise of jurisdiction vested in this Court under Article 227 of the Constitution of India.

³See *Ramesh Chandra Sankla v. Vikram Cement*; (2008) 14 SCC 58



Accordingly, this petition is allowed. Ext.P1 order is set aside. It is declared that any order passed by a Magistrate in the exercise of jurisdiction under Section 14 of the SARFAESI Act cannot be challenged by filing a revision petition under any provision of the BNSS or the Code of Criminal Procedure. I leave it open to the respondents to challenge any proceeding that may have been initiated by the Chief Judicial Magistrate by approaching the Debts Recovery Tribunal by filing a Securitisation Application under Section 17 of the SARFAESI Act.

**Sd/-
GOPINATH P.
JUDGE**

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APPENDIX OF WP(C) 14656/2025

PETITIONER'S EXHIBITS

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| Exhibit P1 | A TRUE COPY OF THE ORDER DATED
8.1.2025 PASSED BY THE SESSIONS COURT,
ERNAKULAM IN CRL.M.P. NO. 102/2025 IN
CRL.R.P. NO. 3/2025 |
| Exhibit P2 | A TRUE COPY OF THIS DECISION DATED
19.12.2022 CITED IN [2023 (1) KLT 387] |
| Exhibit P3 | A TRUE COPY OF THIS DECISION DATED
23/9/21 CITED IN 2021(6) KLT 72 |
| Exhibit P4 | A TRUE COPY OF THE DECISION DATED
26.9.2022 CITED IN 2022 (5) KLT ONLINE
1150 |