IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 2ND DAY OF APRIL 2025 / 12TH CHAITHRA, 1947

OP (DRT) NO. 100 OF 2025

REVIEW APPLICATION NO.1/2025 OF THE DEBTS RECOVERY TRIBUNAL-I, ERNAKULAM, IN ORDER DATED 29-11-2024 FINAL ORDER IN S.A.NO.788/2023 ON THE FILES OF DEBTS RECOVERY TRIBUNAL-I, ERNAKULAM.

PETITIONERS/REVIEW APPLICANTS/APPLICANTS:

1 JALALUDHEEN P.H.,
AGED 70 YEARS,
S/O. PADINJARE HASSAN MUHAMMED HAJI,
XIII 8, NH BYPASS, KUMBALAM, ERNAKULAM-682 506, ALSO AT, NEAR CAMPCO, VIDYANAGAR P.O.,
KASARAGOD-671123, PROPRIETOR, M/S. JALAL TRADING, PIN – 682 506.

2 ZAINUDDEEN ANWAR P.J.,
AGED 33 YEARS, S/O . JALALUDHEEN,
NEAR CAMPCO, VIDYANAGAR P.O., KASARAGOD-671123 REP. BY POWER OF ATTORNEY HOLDER MR. FAIZAL T.Z., AGED 51 YEARS, ROYAL GARDEN, CONVENT CROSS ROAD, KASARAGOD-671 121.

BY ADVS.
V.K.PEERMOHAMED KHAN
GIRISH KUMAR V.C

RESPONDENTS:

1 SOUTH INDIAN BANK LTD.,
REPRESENTED BY ITS BRANCH MANAGER,
THOPPUMPADY BRANCH, DOOR NO.2487 C, KEJEES BUILDING,
OPPOSITE ST. SEBASTIAN'S HIGH SCHOOL,
THOPPUMPADY P.O., ERNAKULAM, PIN – 682 005.

2 THE AUTHORISED OFFICER,
SOUTH INDIAN BANK LTD.,GROUND FLOOR, SIB BUILDING,
NEW INFO PARK ROAD, RAJAGIRI VALLEY P.O., KAKKANAD,
ERNAKULAM, PIN – 682 039.

SRI. P.A.AUGUSTINE, SC

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION ON 21.03.2025, THE COURT ON 02.04.2025 DELIVERED THE FOLLOWING:

JUDGMENT

This original petition has been filed seeking the following reliefs:

1) *"Call for the files leading to Exhibit P.2 Review Application on the files of DRT-I, Ernakulam, by ordering to consider Ext-P.3 stay petition, within the time as framed by this Hon'ble Court;*
2) *Issue appropriate orders on original petition, order or direction by ordering stay of further proceedings under SARFEASI Act against the petitioners and the properties, until the time of Review Application vide R.A No.1/2025 on the files of Debts Recovery Tribunal-I, Ernakulam as per Ext-P.2 is disposed off after hearing the matter;*
3) *Pass such other order or direction which this Honorable court deem fit and proper to grant in the circumstances of the case along with costs of the proceedings."*

2. The petitioners face proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) for recovery of amounts due under credit

facilities availed by them from the respondent bank. They challenged the proceedings initiated against them by filing S.A.No.788/2023 before the Debts Recovery Tribunal-I, Ernakulam. The Tribunal, on a consideration of the contentions raised, dismissed the Securitisation Application by Ext.P1 order dated 29-11-2024. The petitioners thereupon filed a review application, taking the contention that certain arguments raised before the Tribunal were not properly considered by the Tribunal. That review petition is pending consideration of the Tribunal. In the meanwhile, the bank took steps to take physical possession of the secured assets, including the residential house of the petitioners, prompting the petitioners to approach this Court by filing the above original petition seeking the reliefs as aforesaid.

3. The learned counsel appearing for the petitioners would submit that the property mortgaged to the respondent bank is a fairly large extent of property. It is submitted that if the properties other than the residential

house and the land immediately surrounding it are sold by the respondent bank, the sale will be sufficient to clear the liabilities. It is submitted that in such circumstances, the petitioners are entitled to contend that the residential house and its immediate premises may not be proceeded against presently. It is submitted that without waiting for any orders to be passed on the review application, the respondent bank is proceeding to take physical possession of all the properties, including the residential house. It is submitted that at least until the review application is decided, the proceedings under the SARFAESI Act for taking physical possession of the residential house have to be stayed.

4. The learned counsel appearing for the respondent bank submits that the outstanding liability, as on 20-03-2025, is Rs.3,09,76,273/-. It is submitted that the securitisation proceedings were initiated in the year 2023. It is submitted that the account become a Non Performing Asset from 31-03-2023. It is submitted that until the

Securitisation Application was dismissed by Ext.P1 order, the petitioners were enjoying the benefit of the stay of proceedings. It is submitted that after the Securitisation Application was dismissed, in order to prevent the payment of 50% of the amount due as a condition for maintaining an appeal under Section 18 of the SARFAESI Act, the petitioners have chosen the method of filing a review application before the Tribunal. It is submitted that a reading of the review application itself will show that the same is nothing but an attempt to delay the proceedings further and no ground has been made out for review Ext.P1 order of the Tribunal. It is submitted that the properties other than the residential house and properties immediately surrounding the residential house do not have sufficient value to clear the liability with the bank, and therefore, the bank is not willing to consider excluding the residential house and its immediate premises from the proceedings under the SARFAESI Act for the present.

5. Having heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent bank and taking into account the facts and circumstances noticed above, I am of the view that the petitioners have not made out any case for grant of relief under Article 227 of the Constitution of India. The liability, as on 20-03-2025, is stated to be Rs.3,09,76,273/-. The petitioners have already suffered Ext.P1 order in S.A.No.788/2023. The remedy available to the petitioners against Ext.P1 order was to approach the Debts Recovery Appellate Tribunal by filing an appeal and under the provisions of Section 18 of the SARFAESI Act. The petitioners have to deposit 50% of the amount due as a condition for maintaining an appeal before the Debts Recovery Appellate Tribunal. This amount of 50% can be reduced to 25% by the Debts Recovery Appellate Tribunal on an application. However, 25% is the minimum amount payable by the petitioners for maintaining an appeal against an order of the Debts Recovery Tribunal under

Section 18 of the SARFAESI Act. The petitioners have therefore sought the review of Ext.P1 order. In such circumstances, I am constrained to hold that the attempt made by the petitioners is only to delay the proceedings and they have not made out any case for grant of the reliefs sought in exercise of jurisdiction under Article 227 of the Constitution of India. The petitioners are also not in a position to comply with the suggestion of this Court to deposit a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only) for enjoying the benefit of stay pending consideration of the review application by the Tribunal.

The original petition will therefore stand dismissed.

Sd/-
GOPINATH P.
JUDGE

APPENDIX OF OP (DRT) 100/2025

PETITIONERS' ANNEXURES

POWER OF ATTORNEY	**POWER OF ATTORNEY**
Exhibit-P1	**TRUE COPY OF THE FINAL ORDER DATED 29.11.2024 IN S.A NO 788/2023**
Exhibit-P2	**TRUE COPY OF THE R.A NO. 1/2025 IN THE FILES OF THE DEBT RECOVERY TRIBUNAL-I, ERNAKULAM IS PRODUCED HEREWITH AND MARKED AS EXHIBIT-P2**
Exhibit-P3	**TRUE COPY OF THE STAY PETITION FILED AS IA NO: 541/2025 IN RA NO: 1/2025 AND PENDING BEFORE THE HONORABLE TRIBUNAL**
Exhibit-P4	**TRUE COPY OF THE PROCEEDINGS DATED 10.02.2025 DOWNLOADED FROM THE E-DRT PORTAL**
Exhibit-P5	**TRUE COPY OF THE NOTICE DATED 14.03.2025 ISSUED BY THE DEBT RECOVERY TRIBUNAL ERNAKULAM**