



2026:KER:46787

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P. V. BALAKRISHNAN

MONDAY, THE 29TH DAY OF JUNE 2026 / 8TH ASHADHA, 1948

WP(C) NO. 36297 OF 2025

PETITIONERS:

- 1 M/S. DEVA MATHA ROCK PRODUCTS,
A PARTNERSHIP FIRM,
REGISTERED OFFICE AT ODAKKALY,
ASAMANNOR P.O.,
PERUMBAVOOR,
REPRESENTED BY ITS PARTNER
N.D. JOSEPH,
PIN - 682035
- 2 NELLIMATTATHIL DANIEL JOSEPH,
AGED 65 YEARS
S/O. NELLIMATTATHIL MATHAI DANIEL,
NELLIMATTATHIL HOUSE,
AYURVEDHA JUNCTION,
THIRUVAMKULAM P.O.,
THIRUVAMKULAM,
ERNAKULAM,
PIN - 682305
- 3 LEEELA JOSEPH,
AGED 58 YEARS
D/O. THADIKKARAN KURIAKOSE ABRAHAM,
NELLIMATTATHIL HOUSE,
AYURVEDHA JUNCTION,
THIRUVAMKULAM P.O.,
THIRUVAMKULAM,
ERNAKULAM, PIN - 682305

BY ADVS.
DR.K.P.PRADEEP
SHRI.T.T.BIJU
SMT.SMITHA GOPINATH
SMT.T.THASMI
SMT.M.J.ANOOPA
SMT.POOJA V.M.



RESPONDENTS :

- 1 M/S. HERO FINCROP LTD. ,
REGISTERED OFFICE AT 34 ,
BASANT LOK ,VASANT VIHAR NEW DELHI ,
REPRESENTED BY ITS AUTHORISED OFFICER,NO.12 ,
3RD FLOOR, INCUBEX NESTEVERA ,
LONGFORD ROAD , LONGFORD TOWN ,
SHANTHINAGAR , BANGLORE ,
PIN - 110057
- 2 INDIA RESURGENCE ARC PVT LTD ,
32ND FLOOR, NO.1133, 100 FEET ROAD ,
HAL 2ND STAGE , INDIRA NAGAR ,BANGLORE ,
KARNATAKA , REPRESENTED BY
ITS AUTHORISED OFFICER, PIN - 560038
- 3 OMKARA ASSETS RECONSTRUCTION PRIVATE LIMITED ,
REGISTERED OFFICER AT NO 9 ,
M.P. NAGAR ,FIRST STREET ,
KONGU NAGAR EXTENSION ,
COIMBATORE , TIRUPUR ,
TAMIL NADU , PIN - 641607
- 4 DEBT RECOVERY APPELLATE TRIBUNAL (DRAT) ,
CHENNAI ,7TH FLOOR, ADDITIONAL OFFICE BUILDING ,
SHASTRI BHAWAN , HADDOWS ROAD ,
CHENNAI , REPRESENTED BY ITS REGISTRAR ,
PIN - 600006

SRI. P. PAULOCHAN ANTONY, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.06.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



J U D G M E N T

Dated this the 29th day of June, 2026

The 1st petitioner is a partnership firm and the other petitioners are its partners. The 1st petitioner firm had availed a loan from the 1st respondent, and when a default occurred, the 1st respondent initiated coercive steps under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act', for short). When the 1st respondent attempted to take possession of the secured asset, the petitioners filed S.A. No.480 of 2022 before the Debts Recovery Tribunal-I, Ernakulam. But, the S.A. filed by the petitioners was dismissed by the Debts Recovery Tribunal – I, Ernakulam, as per Ext.P3 order, dated 19.06.2023. Challenging Ext.P3 order, the petitioners filed Ext.P4 appeal before the Debts Recovery Appellate Tribunal, Chennai, as A.I.R. No. 1102 of 2023. The petitioners also filed I.A. No.723 of 2024 under the proviso to Section 18 of the SARFAESI Act, seeking waiver of the mandatory pre-deposit to be made along with the appeal.



2. The 1st respondent filed Ext.P11 objection to the waiver application, opposing the prayer. The Tribunal considered Ext.P5 application on merits and as per Ext. P12 order dated 17.09.2025, directed the petitioners to make a pre-deposit of Rs.1,46,50,509.30, being 30% of the alleged due of Rs.4,88,35,031/- as on 31.03.2025, and the petitioners were granted two installments for remitting the amount. It is challenging Ext.P12 order, the petitioners have approached this Court by filing this writ petition.

3. Heard the learned counsel for the petitioners and the learned counsel for respondents 1 to 3.

4. The learned counsel for the petitioners submitted that Ext.P12 order passed by the Debts Recovery Appellate Tribunal is without application of mind and by merely relying on Ext.P11 filed by the 3rd respondent. He submitted that the 'debt due' has to be calculated on the basis of Ext.P2, as on the date of filing of the waiver application and not as on the date of considering the waiver application. He, by relying on Ext.P2, submitted that the 'debt due' is only Rs.2,47,24,895/- and not Rs.4,88,35,031/- as found by the 4th respondent and therefore,



30% of the amount will be less than the amount as ordered by the 4th respondent. He also submitted that the 4th respondent did not take into account the payments made by the petitioners to the Bank during the pendency of the S.A., while passing Ext.P12 order. He further submitted that considering the afore payment and the payments made during the pendency of this writ petition, the petitioners may not be saddled with a further burden to pay the amount as ordered in Ext.P12.

5. *Per contra*, the learned counsel for respondents 1 to 3 vehemently opposed the submissions made by the learned counsel for the petitioners and contended that the attempt of the petitioners is only to protract the matter. He contended that even for considering a waiver application, 25% of the debt due has to be deposited by the petitioners and in the instant case, no such a deposit has been made. He further submitted that the 'debt due' has to be ascertained by the Debts Recovery Appellate Tribunal as on the date on which the application is considered and not on the date on which it was filed.

6. In the instant case, a perusal of Ext.P12 order passed by the Debts Recovery Appellate Tribunal would go to



show that the Tribunal has directed the petitioners to make a pre-deposit of 30% of the amount of Rs.4,88,35,031/-, which comes to Rs.1,46,50,509.30, in two equal installments. It further shows that the 'debt due' as on the date of passing the impugned order, was calculated by the Tribunal on the basis of the submission made by the learned counsel for the financial institution and taking into account the amount claimed in the demand notice dated 22.10.2019. The Hon'ble Apex Court in the decision *Sidha Neelkanth Paper Industries Private Limited (M/s) v. Prudent ARC Limited [2023 KHC Online 6009]*, while considering the proviso to Section 18 of the SARFAESI Act has held thus:

“13. As per S.2(ha) of the SARFAESI Act, “debt” shall have the same meaning assigned to it in clause (g) of S.2 of the Act 1993. As per S.2(g) of the Act 1993, “debt” means any liability inclusive of interest which is claimed as due from any person, by a bank or a financial institution during the course of any business activity undertaken by the bank or the financial institution, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on the date of the application. That the “debt” means any liability inclusive of interest. As per S.18 of the SARFAESI Act, any person aggrieved, by any order made by the DRT under S.17, may prefer an appeal within thirty days to an appellate Tribunal



(DRAT) from the date of receipt of the order of DRT. Second proviso to S.18 provides that no appeal shall be entertained unless the “borrower” has deposited with the Appellate Tribunal fifty percent of the amount of “debt due” from him, as claimed by the secured creditors or determined by the DRT, whichever is less and only and only then, an appeal under S.18 of the SARFAESI Act is permissible against the order passed by the DRT under S.17 of the SARFAESI Act. Under S.17, the scope of enquiry is limited to the steps taken under S.13(4) against the secured assets. Therefore, whatever amount is mentioned in the notice under S.13(2) of the SARFAESI Act, in case steps taken under S.13(2) / 13(4) against the secured assets are under challenge before the DRT will be the 'debt due' within the meaning of proviso to S.18 of the SARFAESI Act. In case of challenge to the sale of the secured assets, the amount mentioned in the sale certificate will have to be considered while determining the amount of pre - deposit under S.18 of the SARFAESI Act. However, in a case where both are under challenge, namely, steps taken under S.13(4) against the secured assets and also the auction sale of the secured assets, in that case, the “debt due” shall mean any liability (inclusive of interest) which is claimed as due from any person, whichever is higher.”

7. This Court, in the decisions in **Union Bank of India, Kottayam v. M/s.Suwique Traders (2025 KHC 709)**, **Authorised Officer and Chief Manager Kerala Gramin Bank v. M/s.Prajith Builders & Developers Private Limited (2026 KHC OnLine 1514)** and **Union Bank of India, Thiruvananthapuram v. Baby John (2026 KHC OnLine 265)**, had also the occasion to



consider the ambit of Section 18 of the SARFAESI Act and it has been held thus:

“In that view of the matter, in an appeal filed under Section 18 of the Act, which is accompanied by an application invoking the provisions of the third proviso to Section 18(1) for waiver of pre-deposit, as stipulated in the second proviso to Section 18(1), the appellant has to deposit with the Appellate Tribunal twenty-five per cent of the debt referred to in the second proviso to Section 18(1). The Appellate Tribunal cannot entertain, i.e., give judicial consideration of an appeal filed under Section 18 and the interlocutory application filed under the third proviso to Section 18(1) for waiver of pre-deposit, as stipulated in the second proviso to Section 18(1), unless the appellant has deposited with the Appellate Tribunal twenty-five per cent of the debt referred to in the second proviso to Section 18(1).”

8. Going by the afore dictums, it is very clear that even for entertaining and considering an application for waiver filed along with the appeal, the appellant has to deposit with the Appellate Tribunal 25% of the debt due referred to in the second proviso to Section 18(1). In other words, unless the appellant deposits 25% of the debt due, as on the date of filing the appeal, before the DRAT, the appellate Tribunal cannot consider the appeal or the waiver application. The dictum laid down by the Apex Court further advises that the 'debt due' has to be calculated on the basis of the amount mentioned in notice



under Section 13(2) / 13(4) / sale notice (whichever applicable) along with the interest claimed in the afore notice. Admittedly, in the instant case, the petitioners have not deposited 25% of the debt due while filing the appeal and the waiver application. This, in turn, means that the act of the Tribunal in proceeding to consider the waiver application and passing Ext.P12 order itself is illegal and cannot be sustained.

9. Be that as it may, considering the fact that the petitioners have remitted substantial amounts to the Bank during the pendency of the SA and as per the interim orders passed by this Court, I am of the view that on the petitioners depositing 25% of the debt due, a direction can be issued to the DRAT to take the appeal on files and consider and dispose of the same on merits as per law.

10. Ergo, this writ petition is allowed in part as follows:-

- (i) Ext.P12 order passed by the DRAT, Chennai is set aside.
- (ii) DRAT, Chennai is directed to take AIR No.1102 of 2023 into files and dispose of the



same as per law, if the petitioners deposit 25% of the debt due as on the date of filing of the appeal before the DRAT, within a period of one month from today.

Sd/-

P. V. BALAKRISHNAN
JUDGE

rp/aks

APPENDIX OF WP(C) NO. 36297 OF 2025

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 13(2) OF THE SARFAESI ACT DATED 22-10-2019
Exhibit P1(a)	TRUE COPY OF THE ORDER OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM DATED 29-03-2021 IN MC NO 333 OF 2020
Exhibit P1(b)	TRUE COPY OF THE ADVOCATE COMMISSIONER NOTICE DATED 27 -09-2022 IN MC NO 333 OF 2020 OF THE ACJM COURT, ERNAKULAM
Exhibit P1(c)	TRUE COPY OF THE ADVOCATE COMMISSIONER NOTICE DATED 31 -03-2023 IN MC NO 333 OF 2020 OF THE ACJM COURT, ERNAKULAM
Exhibit P2	TRUE COPY OF THE SA NO.480 OF 2022 DATED 07-10-2022 FILED BY THE PETITIONERS BEFORE THE DEBTS RECOVERY TRIBUNAL, 1, ERNAKULAM
Exhibit P3	TRUE COPY OF THE ORDER IN SA NO.480 OF 2022 DATED 19-06-2023 OF THE HON'BLE DEBTS RECOVERY TRIBUNAL-1, ERNAKULAM
Exhibit P4	TRUE COPY OF THE APPEAL IN AIR NO 1102 OF 2023 FILED AND PENDING BEFORE THE 4TH RESPONDENT
Exhibit P5	TRUE COPY OF THE IA NO 723 OF 2024 DATED 28-07-2023 FILED BY THE PETITIONERS UNDER PROVISIO TO SECTION 18 OF THE ACT BEFORE THE APPELLATE TRIBUNAL
Exhibit P6	TRUE COPY OF THE APPLICATION DATED 28-07-2023 FOR STAY OF FURTHER DEMAND
Exhibit P7	TRUE COPY OF THE JUDGMENT IN O.P (DRT) NO.319 OF 2023 DATED 24-08-2023 PASSED BY THIS HON'BLE COURT
Exhibit P8	TRUE COPY OF THE ORDER DATED 9-2-2024 IN WP(C) NO 5346 OF 2024
Exhibit P8(a)	TRUE COPY OF THE PAYMENT SCHEDULE OF THE PETITIONERS FROM 30-01-2016 TO 14-10-2019
Exhibit P8(b)	TRUE COPY OF THE PAYMENT DETAILS OF THE PETITIONERS DATED 29-02-2024(FOR AN AMOUNT OF RS.5,00,000/-), DATED 02-03-2024(FOR AN AMOUNT OF RS.5,00,000/-), DATED 04-03-2024(FOR AN AMOUNT OF RS.5,00,000/-), DATED 06-03-2024(FOR AN AMOUNT OF RS.5,00,000/-), TO THE ACCOUNT OF THE 2ND RESPONDENT THROUGH EMAIL



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Exhibit P9	TRUE COPY OF THE JUDGMENT DATED 23-04-2024 IN WP(C) NO 5346 OF 2024
Exhibit P10	TRUE COPY OF THE JUDGMENT DATED 3-5-2024 IN WA NO 626 OF 2024
Exhibit P11	TRUE COPY OF THE OBJECTION IN IA NO 723 OF 2024 FILED BY THE 1ST RESPONDENT
Exhibit P12	TRUE COPY OF THE ORDER DATED 17-09-2025 IN IA NO 723 OF 2024 OF THE 4TH RESPONDENT