



2025:KER:83529

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

TUESDAY, THE 4TH DAY OF NOVEMBER 2025 / 13TH KARTHIKA, 1947OP (DRT) NO. 293 OF 2025

SA NO.598 OF 2025 OF DEBT RECOVERY TRIBUNAL- 2, ERNAKULAM

PETITIONERS:

- 1 M/S. SOUTHERN CASHEW EXPORTERS,
REPRESENTED BY ITS MANAGING PARTNER M.SHAMSUDEEN, AGED 62
YEARS, S/O. MUHAMMEDKUNJU, VIII /1092, O.S.
ROAD, CHANTHANATHOPPE, KOLLAM, PIN - 691014
- 2 M/S. FATHIMA CASHEW COMPANY,
REPRESENTED BY ITS PROPRIETOR MR. BASHEER M AGED 66 YEARS
S/O. MUHAMMEDKUNJU, MOONLIGHT, CHATHINAMKULAM, PERINAD,
CHANTHANATHOPPE P.O, KOLLAM, PIN - 691014
- 3 M/S. M.M.K. EXPORTS, REPRESENTED BY ITS PROPRIETOR M. ABDUL
RAHIM, AGED 68 YEARS S/O. MUHAMMEDKUNJU, NIZAR MANZIL,
KUTTICHIRA, TKMC P.O, KOLLAM, PIN - 691014
- 4 M.SHAMSUDEEN, AGED 62 YEARS
S/O. MUHAMMEDKUNJU, VIII/1092, O.S. ROAD, CHANTHANATHOPPE,
KOLLAM DISTRICT, PIN - 691014
- 5 M. HAMSA, AGED 56 YEARS
S/O. MUHAMMEDKUNJU, AJMAL MANZIL, CHANTHANATHOPPE P.O, KOLLAM
DISTRICT, PIN - 691014
- 6 M. SHARAFUDEEN, AGED 50 YEARS
S/O. MUHAMMEDKUNJU, MMK RESIDENCY, CHANTHANATHOPPE P.O,
KOLLAM DISTRICT, PIN - 691014
- 7 M. KAMARUDEEN, AGED 58 YEARS
S/O. MUHAMMEDKUNJU, AJMAL MANZIL, CHANTHANATHOPPE P.O, KOLLAM
DISTRICT, PIN - 691014

BY SRI.S.SREEKUMAR (KOLLAM)
SHRI.K.VIJAYAN/SHRI. RAJ CAROLIN V.
SMT.NAMITHA RAJESH/SMT.NITHYA V.D.



2025:KER:83529

RESPONDENT/S:

- 1 UNION BANK OF INDIA,
REPRESENTED BY ITS CHIEF MANAGER, BRANCH-2, KOLLAM, NK
BUILDING, BEACH ROAD, KOLLAM, PIN - 691001

- 2 THE AUTHORIZED OFFICER,
UNION BANK OF INDIA, REGIONAL OFFICE, KOLLAM, PIN - 691001

BY SHRI.ASP.KURUP
SRI.SADCHITH.P.KURUP
SHRI.SIVA SURESH
SMT.B.SREEDEVI
SMT.ATHIRA VIJAYAN

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION ON
04.11.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



2025:KER:83529

JUDGMENT

(Dated this the 4th day of November 2025)

The respondent bank filed O.A.Nos.86 of 2023, 443 of 2024 and 707 of 2024 before the Debt Recovery Tribunal -2, Ernakulam for recovery of amounts due to them from the petitioners. A compromise petition dated 12.1.2025 was prepared on the basis of the settlement between the parties. The petitioners remitted an amount of ₹10.5 crores pursuant to the settlement. Thereafter, the respondent bank issued Ext.P1 letter dated 24.3.2025 directing the petitioners to remit the balance OTS amount on or before 31.3.2025 or else the OTS will stand cancelled. The petitioners, thereafter, deposited 25% of the OTS amount being ₹13,97,27,800/- and requested for extension of time till 31.3.2025, to which the 2nd respondent issued Ext.P2, whereby the petitioners were directed to deposit an upfront amount as a token of positive intention for payment of the remaining OTS amount. Petitioners remitted an



2025:KER:83529

amount of ₹25 lakhs as upfront amount. The respondents bank, thereafter, issued Ext.P3 on 1.7.2025, stating that the competent authority is not inclined to consider the OTS proposal and therefore, the OTS stands withdrawn. Aggrieved by the withdrawal of OTS scheme, petitioners filed W.P.(C) No.29765 of 2025 which was disposed on 22.8.2025 by Ext.P5 judgment, leaving open the right of the petitioners to approach the bank for any concession/benefit of OTS within a week and all further proceedings were deferred for 3 weeks.

2. The respondent bank challenged Ext.P5 in W.A.No.2114 of 2025 and a Division Bench of this court concurred with the view of the learned Single Judge regarding the OTS scheme, but interfered with the impugned judgment to the extent it deferred the proceedings against the petitioners. The petitioners, thereafter, approached the DRT and preferred S.A.No.598 of 2025 challenging



2025:KER:83529

the cancellation of OTS as per Ext.P3 and filed I.A.No.3615 of 2025 to stay all further proceedings pursuant to Ext.P4 possession notice issued by the Advocate Commissioner.

3. The Tribunal, thereafter, by Ext.P7 dated 16.9.2025, passed an order in I.A.No.3615 of 2025 refusing to grant any interim order without giving opportunity to the bank and the petitioners were directed to serve a copy of the S.A./I.A. and its annexure documents to the respondent bank and posted the S.A. for filing written statement and counter to the said I.A.

4. The grievance of the petitioners is that when the tribunal has posted the case for filing of counter affidavit to I.A. and written statement to the SA, all further proceedings ought to have been deferred, otherwise, if the physical possession of the secured assets is taken, the withdrawal of OTS will stand approved and the proposal for OTS cannot be fulfilled. Hence, the petitioners pray



2025:KER:83529

that Ext.P7 be set aside and all further proceedings pursuant to Ext.P4 be stayed till a final decision is taken by the DRT in the S.A.

5. An interim order was passed by this court on 26.9.2025, whereby Ext.P7 was stayed for one month noting that there was absence of consideration of a *prima facie* case, the balance of convenience or the irreparable injury.

6. The respondent bank challenged the said order in W.A.No. 2388 of 2025 and a Division Bench of this court dismissed the Appeal on 24.10.2025 holding that the interim order passed on 26.9.2025 is one issued in exercise of the supervisory jurisdiction of this court under Article 227 of the Constitution of India and therefore, is not appealable under Section 5(i) of the Kerala High Court Act, 1958.

7. A counter affidavit is filed by the respondents, wherein it is contended that the challenge to issuance of possession notice in this



2025:KER:83529

O.P. is without exhausting the exclusive and efficacious statutory remedy available under the Recovery of Debts Due to Banks and Financial Institutions Act, 2002 (RDDBFI Act) and the SARFAESI Act. Under Section 18 of the SARFAESI Act, any person aggrieved by any order passed by the DRT, may prefer an appeal to DRAT within 30 days from the date of receipt of the order of the DRT, with a pre deposit of 50% of the amount claimed by secured creditors, subject to any reduction by the DRAT. The petitioners' failure to honour the payment schedule as per OTS was duly considered by the respondents Bank and the cancellation of the OTS is in accordance with the mandate under the SARFAESI Act. If any of the conditions of the OTS proposal is not complied with by the borrower, the bank has the right to withdraw the same. Therefore, prayed that the O.P. is not maintainable and be dismissed.

8. Ext.P7 is under challenge in this O.P. under Article 227 of



2025:KER:83529

the Constitution of India. Ext.P7 is the order passed in I.A. No.3615 of 2025, which is an application filed for staying all further proceedings pursuant to the Commissioner's notice dated 23.7.2025. For a proper understanding of the order under challenge, the relevant portion of Ext.P7 is extracted hereunder:-

“Considering the submissions made by the applicant and on perusal of the available materials on record, it appears from the Judgment of the Hon'ble High Court of Kerala passed in WA No.2114/2025 dated 27.08.2025 declined to defer the further proceeding in the securitization proceeding. No prima facie case is made out by the applicants to grant any interim relief in this case. Hence, I am not inclined to pass any interim order without giving opportunity to the other side.

4. Applicant is directed to serve copy of the SA/IA and all its annexure document to learned counsel for the defendant before next date. List the case on 06.10.2025 for filing Vakalath, written statement and counter to IA.”

9. When an application is filed for stay of proceedings pending disposal of the securitisation application, the Tribunal has the duty



2025:KER:83529

to act on it and pass appropriate order in accordance with law, applying its mind. A perusal of the order would show that the interim order is not granted because of the fact that the High Court of Kerala in W.A.No.2114 of 2025 declined to defer the further proceedings in securitisation proceedings. At the same time, the I.A. is posted for giving opportunity to the bank to file a counter as well as a written statement in the S.A. It is to be noted that Ext.P4 is the notice issued by the Advocate Commissioner to take physical possession of the secured assets while the said S.A. is pending. When the rejection of OTS proposal is pending consideration by the DRAT, the stay application filed along with it should be disposed of recording sufficient reasons. Merely because this court has not deferred the further proceedings, is not a reason for rejecting the stay application.

10. In **Jimmy Thomas v. Indian Bank** [2023 (4) KHC 42], it



2025:KER:83529

was held that when considering an application for interim stay, it is for the Tribunal to apply its mind to the contentions taken in the securitisation application and shall take a decision on whether or not an interim stay should be granted on the well settled principles governing the grant of interim relief.

11. A perusal of Ext.P7 would show that the Tribunal has not considered the application on the settled principles :- (i) strong prima facie case, (ii) balance of convenience and (iii) irreparable injury. Therefore, I am of the considered opinion that this court, invoking the jurisdiction under Article 227 of the Constitution of India, should necessarily interfere with Ext.P7, as the impugned order shows non - application of mind.

12. Resultantly, Ext.P7 stands set aside and the DRT is directed to take up I.A.No.3615 of 2025, after the respondent bank has filed its counter to the said I.A., and after giving opportunity to



2025:KER:83529

both sides, pass appropriate orders in accordance with law, taking into consideration the well settled principles governing the grant of interim relief. Till the matter is considered and decided, all coercive proceedings against the petitioners shall stand deferred.

The O.P.(D.R.T) is allowed as indicated above.

Sd;-
BASANT BALAJI
JUDGE

dl/



2025:KER:83529

APPENDIX OF OP (DRT) 293/2025

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE OTS SANCTION LETTER ISSUED BY THE DEFENDANT BANK BEARING REF NO. ARB/2024-25/963 DATED 24/03/2025
- Exhibit P2 TRUE COPY OF THE COMMUNICATION ISSUED BY THE 2ND RESPONDENT BEARING REF NO. ARB/2025-26/059 DATED 16/05/2025
- Exhibit P3 TRUE COPY OF THE CANCELLATION OF OTS LETTER ISSUED BY THE 2ND RESPONDENT BEARING REF NO. ARB/2025-26/149 DATED 01/07/2025
- Exhibit P4 TRUE COPY OF THE POSSESSION NOTICE ISSUED BY THE ADVOCATE COMMISSIONER DATED 23/07/2025
- Exhibit P5 TRUE COPY OF THE JUDGEMENT OF THIS HON'BLE COURT IN WPC NO. 29765 OF 2025 DATED 22/08/2025
- Exhibit P6 TRUE COPY OF THE JUDGEMENT OF THIS HON'BLE COURT IN WA NO. 2114 OF 2025 DATED 27/08/2025
- Exhibit P6(a) THE TRUE COPY OF THE MEMORANDUM OF S.A. NO. 598 OF 2025 OF HON'BLE DEBT RECOVERY TRIBUNAL -II, ERNAKULAM AND ITS IA NO. 3615 OF 2025
- Exhibit P7 THE TRUE COPY OF THE ORDER DATED 16/09/2025 OF THE DEBT RECOVERY TRIBUNAL-II, ERNAKULAM, IN I.A NO. 3615/2025 IN S.A.598/2025

RESPONDENT EXHIBITS

- Exhibit R1A A true copy of the final order dated 14.6.2024 in SA 446/2022