



2025:KER:91345

W.A.No.2629 of 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

THURSDAY, THE 27TH DAY OF NOVEMBER 2025/6TH AGRAHAYANA, 1947

W.A.NO.2629 OF 2025

AGAINST THE JUDGMENT DATED 17.10.2025 IN W.P. (C)NO.32541

OF 2025 OF THE HIGH COURT OF KERALA

APPELLANTS/PETITIONERS:

- 1 M/S. M.D. ESTHAPPAN INFRASTRUCTURE PVT. LTD.,
REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE, MR. BIJI
STEPHEN HAVING ITS REGISTERED ADDRESS AT:144, RAILWAY
STATION NAGAR, NEAR ST. JOSEPH HIGH SCHOOL, ANGAMALY,
ERNAKULAM, PIN - 683572
- 2 MR. M.D. ESTHAPPAN (DIED)
AGED 89 YEARS
MANAGING DIRECTOR OF M.S. M.D. ESTHAPPAN
INFRASTRUCTURE PVT. LTD. 14/306, MOOLAN HOUSE, NH 47,
NEAR ST. JOSEPH HIGH SCHOOL, ANGAMALY,
ERNAKULAM, PIN - 683572
- 3 JOSY STEPHEN, AGED 57 YEARS
LEGAL HEIR OF 2ND APPELLANT, MR. M.D. ESTHAPPAN,
(DIED), MANAGING DIRECTOR OF M.S. M.D. ESTHAPPAN
INFRASTRUCTURE PVT. LTD. RESIDING AT 14/306, MOOLAN
HOUSE, NH 47, NEAR ST. JOSEPH HIGH SCHOOL, ANGAMALY,
ERNAKULAM, PIN - 683572
- 4 BIJI STEPHEN, AGED 55 YEARS
LEGAL HEIR OF 2ND APPELLANT, MR. M.D. ESTHAPPAN,
(DIED), MANAGING DIRECTOR OF M.S. M.D. ESTHAPPAN
INFRASTRUCTURE PVT. LTD. RESIDING AT 14/306, MOOLAN
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ERNAKULAM, PIN - 683572

BY ADVS. MATHEWS J. NEDUMPARA, SR. COUNSEL
SMT. MARIA NEDUMPARA
SHRI.SHAMEEM FAYIZ V.P.
SHRI.ROY PALLIKOODAM

**RESPONDENTS/RESPONDENTS :**

- 1 RESERVE BANK OF INDIA,
REPRESENTED BY ITS GOVERNOR SHAHID BHAGAT SINGH ROAD,
FORT, MUMBAI, PIN - 400001
- 2 BOARD OF DIRECTORS OF DHANLAXMI BANK LTD.,
REPRESENTED BY ITS CEO & MANAGING DIRECTOR, REGISTERED
OFFICE, DHANALAKSHMI BUILDINGS, P.B NO.9, NAICKANAL,
THRISSUR, KERALA, PIN - 680001
- 3 DHANLAXMI BANK LTD,
REPRESENTED BY ITS CEO & MANAGING DHANALAKSHMI
BUILDINGS, P.B. NO.9, NAICKANAL, THRISSUR,
KERALA, PIN - 680001
- 4 AUTHORISED OFFICER & CHIEF MANAGER,
DHANLAXMI BANK LTD., REGIONAL OFFICE, DHANALAKSHMI
BUILDINGS, 1ST FLOOR, MARINE DRIVE,
KOCHI, KERALA, PIN - 682031
- 5 MINISTRY OF MICRO SMALL AND MEDIUM ENTERPRISES,
REPRESENTED BY ITS SECRETARY, UDYOG BHAWAN, RAFI MARG,
NEW DELHI, PIN - 110001
- 6 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF FINANCIAL
SERVICES, MINISTRY OF FINANCE, 3RD FLOOR, JEEVAN DEEP
BUILDING, SANSAD MARG, NEW DELHI, PIN - 110001
- 7 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 8 GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, KAKKANADU,
ERNAKULAM, PIN - 682030
- 9 CHAIRMAN,
MICRO AND SMALL ENTERPRISE FACILITATION COUNCIL
(MSEFC), DIRECTORATE OF INDUSTRIES COMMERCE, VIKAS
BHAVAN P.O, THIRUVANANTHAPURAM, KERALA, PIN - 695033
- 10 CHAIRMAN,
STATE LEVEL INTER-INSTITUTIONAL COMMITTEE, REGIONAL
OFFICE, RESERVE BANK OF INDIA, BAKERY JUNCTION, P.B.
NO. 6507, THIRUVANANTHAPURAM, PIN - 695033



- 11 GAIL (INDIA) LTD.,
REPRESENTED BY ITS GENERAL MANAGER, KINFRA HI- TECH
PARK, OFF - HMT ROAD, HMT COLONY P.O., KALAMASSERY,
ERNAKULAM, PIN - 683503
- 12 BHARAT PETROLEUM CORPORATION LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, KOCHI REFINERY,
AMBALAMUGAL, ERNAKULAM, PIN - 682302
- 13 COCHIN SMART MISSION LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, 10TH FLOOR,
REVENUE TOWER, PARK AVENUE, ERNAKULAM, PIN - 682011
- 14 ADV. RASEENA P.R.,
ADVOCATE COMMISSIONER APPOINTED IN MC. NO.1319, IN THE
FILES OF LD. ADDL. CJM, ERNAKULAM, ERNAKULAM BAR
ASSOCIATION, PIN - 682031
- 15 STATION HOUSE OFFICER,
ANKAMALY POLICE STATION, NEAR KSRTC STAND,
ANKAMALY P.O., KOCHI, PIN - 683572
- 16 ANIL DHIRAJLAL AMBANI,
39, SEA WIND, CUFFE PARADE, COLABA,
MUMBAI, PIN - 400005
- 17 MUKESH AMBANI,
CHAIRMAN, RELIANCE INDUSTRIES, 3RD FLOOR, MAKER
CHAMBERS IV, 222, NARIMAN POINT, MUMBAI, PIN - 400021
- 18 THE CHAIRMAN,
STATE BANK OF INDIA, CORPORATE CENTER, 16TH FLOOR,
MADAM CAMA ROAD, NARIMAN POINT, MUMBAI, PIN - 400021

BY ADV SHRI.BENRAJ K.R., CGC
SMT.O M SHALEENA, DSGI
SMT. NISHA BOSE, SR. GP,
SRI.C K KARUNAKARAN, SC, DHANALAKSHMI BANK,
SRI.AJITHKRISHNAN, SC, GAIL
SRI.S.MOHAMMED AL-RAFI, SC, GAIL
SMT.M.U.VIJAYALAKSHMI, SC, CSML
SRI.JITHESH MENON, SC, SBI
BY ABEL TOM BENNY, SC FOR BPCL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11.11.2025,
THE COURT ON 27.11.2025 DELIVERED THE FOLLOWING:

**"C.R"****JUDGMENT****Anil K. Narendran, J.**

The 1st petitioner in W.P.(C)No.32541 of 2025 and the legal heirs of the deceased 2nd petitioner have filed this writ appeal, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958, challenging the judgment dated 17.10.2025 of the learned Single Judge in that writ petition, which was one filed invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking the following reliefs;

- "a) To declare that the failure on the part of the Central Government/RBI to implement the MSMED notification dated 29.05.2015, in particular, to ensure that the Board of Directors of the Banks/financial institutions in this country, including the respondent Bank, constitutes a committee for 'stressed micro, small and medium enterprise' and further to prevent the Banks and NBFCs from classifying the account of an MSME as NPA and resorting to recovery under the SARFAESI, RDB Act, IBC, NI Act, etc. in violation of the prohibition to do so as contained in paragraphs 1 and 5(4)(iii) of the said notification, amount to gross failure on their part to comply with the statutory duty cast upon them under Sections 35, 35A, 35AA, 36, 36AA of the Banking Regulation Act and Sections 45-IE of the Reserve Bank of India Act, and Sections 9 and 10 of the MSMED Act;
- b) To declare that the entire proceedings initiated by the respondent Bank as against the petitioner in violation of the



notification dated 29.05.2015, which not a single bank/financial institution in this country has given effect to, is rendered void ab initio, still born, and that, that alone is the inevitable consequence because the notification does not provide for any penal provision for violation thereof, and that such an inevitable legal consequence is not lost or extinguished simply because an MSME, which the law recognizes as predominantly weak and financially illiterate, had failed to raise such a plea;

c) To declare that Section 13 of the SARFAESI Act, and Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, Sections 7, 9, 10 and 95 of the Insolvency and Bankruptcy Code, 2016, are unconstitutional, ultra vires and void and are liable to be so declared, inasmuch as the said enactments are wholly one-sided, drafted on the grossly erroneous premise that the right to relief, nay, remedies, arise only at the hands of a banker as against the borrower and that the enquiry to be conducted is wholly one-sided, or in the alternative to declare that the borrower's right to be an actor/petitioner for the enforcement of his remedies has to be read into the said Acts;

d) To issue a writ in the nature of certiorari or any other appropriate writ or order or direction calling for the entire records and proceedings of the action which the respondent Bank has initiated against the petitioners under Sections 13(4) and 14 of the SARFAESI Act and Section 19 of the RDB Act, and to quash and set aside the same being illegal and void;

e) To declare that Section 34 of the RDB Act, and Section 34 of the SARFEASI Act and Section 63 which bar the



jurisdiction of the Civil Court to entertain and adjudicate the petitioner's/borrower's plea against the respondent Bank nay, bank/financial institution, is unconstitutional and void inasmuch as the petitioners, victims of the gross breach of contract, culpable negligence, malicious and tortious action, so too, violation of the express statutory provisions at the hands of the respondent Bank, are entitled to institute an action/suit as against the respondent Bank for the enforcement of the petitioners' right as against them;

f) Declare that the petitioner being an MSME within the meaning of Sections 7 and 8 of the MSMED Act of 2006, it is entitled to the benefits of the said Act and, in particular, the notification S.O.1432(E) dated 29.05.2015 issued by the Central Government under Section 9 of the Act which provides for a mechanism of resolution of stress of MSMEs, as also, the circulars and guidelines issued by the Reserve Bank of India under Section 10 of the MSMED Act and further that no proceedings for recovery of the amounts due by the MSMEs to banks/financial institutions, nay, even operational creditors, shall lie against the petitioner under the SARFAESI Act, RDB Act, IBC, Negotiable Instruments Act or any other law, for recovery of the amounts allegedly due, in as much as the MSMED Act being a special law/later law in relation to the aforesaid enactments, the MSMED Act will prevail over them and recovery can be made only in accordance with article 5 (4) (iii) of the aforesaid notification dated 29.05.2015;

g) Declare that the MSMED Act insofar as it has not created a special forum/Tribunal to enforce the inter-se rights and obligations/remedies, which it has created in addition to



those rights/obligations/remedies recognized by the common law, the jurisdiction of the Civil Court is not ousted, for it is impossible to oust the jurisdiction of the Civil Court without providing for an alternative forum/tribunal to adjudicate the inter se disputes between parties who are governed by the Act, and further as a corollary thereof, the DRTs, NCLTs created under the RDB Act 1993 and the Companies Act 2013 are invested of no jurisdiction to adjudicate a dispute arising out of/involving the MSMED Act;

h) Declare that the entire recovery steps initiated by respondent Bank under the SARFAESI Act or any other law, is without jurisdiction, illegal and void inasmuch as the respondents are not entitled to take recourse to any form of recovery of the amounts they claim to be due to them from the petitioner except in the manner permitted by the 'Committee for Corrective Action Plan' contemplated in notification S.O.1432(E) dated 29.05.2015, and further to issue a writ in the nature of certiorari quashing and setting aside the entire action taken by the respondent Bank under Sections 13(2), 13(4) and 14 of the SARFAESI Act/Section 19 of the RDB Act;

i) To issue a writ in the nature of mandamus or any other appropriate writ/order or direction directing Central Government and the RBI to enforce the notification dated 29.5.2015 in its true letter and spirit and further to direct the Central Government and the RBI to ensure that recovery action initiated against the petitioners in violation of the mandate of the notification is recalled, the clock is put back, the injustice which the petitioners is made to suffer is redressed and that the petitioners is compensated in full



measure;

j) To issue a writ in the nature of prohibition restraining and prohibiting Respondent Bank/Financial institution, their agents, servants, officers, representatives from taking any action for recovery under the SARFAESI Act, IBC, Arbitration and Conciliation Act, Recovery of Debts and Bankruptcy Act, Negotiable Instruments Acts or any other law in respect of the amounts they falsely claim to be due from the petitioners, in particular restraining respondent No.4, from dispossessing the petitioners of their properties;

k) To issue a writ in the nature of mandamus or any other appropriate writ/order or direction directing the Respondent-bank to constitute a committee for the resolution of the stress in the unit of the petitioners Company, an MSME, as contemplated in paragraph 2 of the notification dated 29.05.2015 issued under the MSMED Act, and further to direct the Committee to resolve the stress in accordance with the said notification and such other relevant notifications/ regulations framed by the RBI;

l) To issue a writ in the nature of mandamus or any other appropriate writ/order or direction directing respondents to put the clock back in respect of the entire action initiated under the SARFAESI Act, in particular, cancel the classification of the petitioners' loan accounts as NPA and the demand notice dated 13.01.2023, putting the petitioners' properties to sale and further to make attempts to revive the petitioners' business as mandated by the notification dated 29.05.2015;

m) To declare that the various petitions which the petitioners has instituted does not constitute a Cause of Action



Estoppel, nay, estoppel per rem judicatam/res judicata, not even issue estoppel, inasmuch as there is no Estoppel against statute, does not constitute cause of action estoppel, nay estoppel per rem judicatam/res judicata, or even Issue Estoppel inasmuch as the rights and remedies which the petitioners seek to enforce in the instant is based on the notification dated 29.05.2015, and for the added reason that in the previous proceedings before the High Court of Kerala and other forums there was never an adjudication on merits;

n) Declare that the circular dated 17.03.2016 restricting, nay completely taking away, the benefit of the notification dated 29.05.2015 from MSMEs whose credit limit exceeds Rs.25 crores, is illegal, ultra vires the MSMED Act/notification and void to that extent that it takes away such right;

o) To declare that the circulars dated 17.03.2016, 26.06.2020, and 04.06.2021 are liable to be read together, and that by virtue of the circular dated 04.06.2021, the cap of Rs.25 crores imposed by the RBI stands altered and amended;

p) Without prejudice to reliefs above, to issue a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the RBI to remove the cap of Rs.25 crores which it had imposed by circular dated 17.03.2016 or in the alternative to enhance it with retrospective effect to a minimum of Rs.50 crores, taking into account the revision of the definition of MSMEs from time to time enhancing the upper limit manifold time;

q) Issue a writ in the nature of mandamus directing



respondent No.11, GAIL, to release the entire amount pending final determination of the amount due to the petitioners, subject to the final determination under Section 18 of the MSMED Act/Arbitration.

r) To direct the MSME Council at the state/district level and/or the Director of Industries, Kerala/Director of Industries, Ernakulam, to ensure that the entire, or at least 50 percent of the amount due to the petitioners from respondent No.11 GAIL is released to him.”

2. The 1st appellant is M/s.M.D. Esthappan Infrastructure Pvt. Ltd., a company incorporated under the Companies Act, 1956. The 2nd appellant M.D. Esthappan, who was the Managing Director of the said company, died during the pendency of the writ petition, and his legal heirs are the 3rd and 4th appellants. W.P.(C)No.32541 of 2025 was filed mainly challenging the proceedings initiated by the 3rd respondent Dhanlaxmi Bank Ltd., under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), seeking the aforesaid reliefs. The interim relief sought for in the writ petition reads thus;

“To stay all proceedings against the petitioners under the SARFAESI Act, RDB Act, IBC and NI Act pending disposal of the above writ petition/the constitution of a committee for the resolution of stress.”

3. In the writ petition, the learned Standing Counsel for



Dhanlaxmi Bank Ltd. filed a statement dated 28.08.2025, on behalf of respondents 2 to 4, opposing the reliefs sought for. Along with I.A.No.1 of 2025, respondents 2 to 4 have placed on record Exts.R4(a) to R4(f) documents.

4. After considering the rival contentions, the learned Single Judge dismissed W.P.(C)No.32541 of 2025, by the judgment dated 17.10.2025, on a finding that none of the principles argued by the learned counsel for the petitioner based on the authorities referred therein holds that a writ petition can be filed by the same person raising the same contentions against the same adversary. None of the exceptions stated for avoiding principles of res judicata applies to the instant case. The litigations having lost up to the Apex Court, a reconsideration on the merits of the present case cannot be made. The learned Single Judge found no merit in the writ petition and the same was accordingly dismissed. In paragraph 7 of the judgment dated 17.10.2025, the learned Single Judge dealt with the earlier litigations of the petitioners. Paragraph 7 of the judgment reads thus;

“7. The earlier litigations of the petitioner before this Court, wherein the contention claiming the protections to MSME were raised and considered, are as follows:



Sl. No.	Case Number	MSME Contentions	Details in Judgment
1	WPC No. 4631/2025, withdrawn on 07.2.2025	The petitioners challenged the RBI Notification No. FIDD.MSME & NFS.BC.No.21/06.02.31/2015 -16 dated 17.03.2016 (Ext.P3) to the extent it restricted the revival and rehabilitation framework for MSMEs to accounts with exposure up to Rs. 25 crores. They argued that such a restriction was arbitrary and contrary to the MSMED Act, 2006, and that they were entitled to the statutory protection under the framework for stressed MSMEs notified on 29.05.2015.	The Court noted that the same petitioners had already raised the issue in W.P.(C) No. 46514 of 2024, where the bank had contended that their loan account exceeded the Rs. 25 crore limit. The Court held that the petitioners should have challenged Ext.P3 in that pending writ petition and not through a separate one. On request of the petitioner's counsel, the writ petition was dismissed as withdrawn with liberty to amend W.P.(C) No. 46514 of 2024 to incorporate the challenge to Ext.P3, expressly leaving open all contentions.
2	WPC No. 46514/2024, judgment dated 11.03.2025	The petitioners contended that they are MSMEs under the MSMED Act, 2006, and that all proceedings initiated by Dhanlaxmi Bank under SARFAESI were illegal since the bank had failed to follow the RBI-mandated "Framework for Revival and Rehabilitation of MSMEs" notified on 29.05.2015 (Ext. P2) and made binding through RBI Circular dated 17.03.2016 (Ext. P3). They argued that once a borrower is registered as an MSME, the bank must	Held that the claims were barred by the rulings in <i>Pro Knits v. Canara Bank</i> and <i>P.K. Krishnakumar v. IndusInd Bank</i> , since the petitioners had not sought reference to the MSME Committee prior to their account being classified as NPA on 27.09.2024. The Court further noted that their loan exposure exceeded



		<p>refer its account to the Committee for Stressed MSMEs before declaring it NPA, and that no recovery can proceed until rectification or restructuring is found unfeasible. They relied on <i>Pro Knits v. Canara Bank</i> (2024 10 SCC 292) and other precedents to assert that failure to constitute such a Committee rendered all SARFAESI actions void ab initio.</p>	<p>Rs. 25 crores, hence outside the scope of the MSME framework, which applies only to exposures up to Rs. 25 crores. It also found that petitioners had engaged in piecemeal and repetitive litigation before various fora. Following binding precedent and holding that the SARFAESI Act prevails over notifications under section. 9 MSMED Act, the writ petitions were dismissed, with the Court rejecting all reliefs sought.</p>
3	<p>W.A. 481 and 484 of 2025 in WPC No. 45166/2024, and in WPC No. 46514/2024, judgment dated 24.06.2025</p>	<p>1. Non-implementation of MSME Framework: Central Govt. and RBI failed to implement the notification dated 29.05.2015 mandating a "Committee for Stressed MSMEs".</p> <p>2. Violation of MSME Protection: Banks could not classify MSME accounts as NPAs or proceed under SARFAESI/RDB/IBC without following the corrective action mechanism under the 2015 notification.</p> <p>3. Supremacy of MSMED Act: MSMED Act, being a <i>special and later law</i>, prevails over SARFAESI, RDB, and IBC Acts; recovery can only follow the MSME rehabilitation process.</p> <p>4. Unconstitutionality Challenge: Sections 13 of SARFAESI, 19 of RDB, and certain IBC provisions are</p>	<p>The Division Bench, following <i>Pro Knits v. Canara Bank</i>, held that MSME protections must be invoked before an account is classified as NPA (or at the stage of incipient stress); a belated claim raised after classification cannot be used to derail SARFAESI/ recovery steps. Applying that dictum, the Court found the petitioners had sought MSME relief only after their accounts were declared NPA, so their plea was unsustainable. The Bench therefore reaffirmed that MSME</p>



		unconstitutional for being one-sided in favour of banks.	notifications are facilitative only when acted upon at the proper stage, not a shield to be raised post-classification, and upheld the Single Judge's dismissal of the writs.
4	SLP No. 17263/2025	SLP was filed against W.A. No. 481 and 484 of 2025	Dismissed SLP on 09.07.2025
5	MA 1330/2025	Filed to restore the dismissed SLP.	Dismissed MA on 28.07.2025.
6	RP No. 797/2025 and 799/2025 in W.A. No. 481 of 2025 and 484 of 2025	The judgment sought to be reviewed is one rendered after taking note of the rival contentions on the law laid down by the Apex Court in <i>Pro Knits</i> [(2024) 10 SCC 292] and that laid down by the Division Bench of this Court in <i>P.K. Krishnakumar</i> [2024 SCC OnLine Ker 6888]. There is no error apparent on the face of the record, warranting an interference in the exercise of the review jurisdiction under Order XLVII Rule 1 of the Code.	Dismissed on 28.07.2025
7	WPC No. 17617/2025	The petitioners, M.D. Esthappan Infrastructure Pvt. Ltd. and its Managing Director claimed to be registered MSMEs under the MSMED Act, 2006, and contended that the Dhanlaxmi Bank had violated the mandatory rehabilitation framework under the MSME Notification dated 29.05.2015 and the RBI Notification dated 17.03.2016 by classifying their account as NPA on 31.07.2023 without first initiating corrective action. They relied on <i>Pro Knits v.</i>	Dismissed the writ petition on 28.07.2025, holding that the law laid down in <i>Transcore</i> and reaffirmed in <i>M.D. Frozen Foods</i> and <i>Sri Nangli Rice Mills</i> remained binding under Article 141. The Court held that SARFAESI and RDB Acts are complementary and simultaneous proceedings are



		<p><i>Canara Bank</i> [(2024) 10 SCC 292], asserting that the framework was obligatory and that the SARFAESI proceedings initiated thereafter were void. They also challenged the Bank's simultaneous recourse under SARFAESI and the RDB Act, contending that such dual proceedings were barred under Section 13(10) of SARFAESI and the proviso to Section 19(1) of the RDB Act, and violated principles of <i>ne bis in idem</i> and <i>res judicata</i>. The petitioners urged reconsideration of <i>Transcore v. Union of India</i> (AIR 2007 SC 712), arguing that it was wrongly decided and per incuriam.</p>	<p>legally permissible. It rejected the plea that <i>Transcore</i> was per incuriam and deprecated any deviation from settled precedent. The Court further found that the petitioners' earlier writ petitions (W.P.(C) Nos. 45166 and 46514 of 2024) and writ appeals (W.A. Nos. 481 and 484 of 2025) had already adjudicated the same MSME contentions, and that the present writ was barred by <i>constructive res judicata</i> and amounted to re-litigation. Citing <i>Celir LLP v. Sumati Prasad Bafna</i> (2024 SCC OnLine SC 3727), the Court reaffirmed that MSME registration does not bar NPA classification or recovery under SARFAESI and dismissed the writ petition as meritless and repetitive.</p>
8.	W.A No.1872 of 2025 in WPC No. 17617/2025	Filed against the judgment dated 28.07.2025 in WPC No. 17617/2025	When the case was posted for arguments vakalath for the appellants (petitioners) was relinquished by the counsel. The following order was passed by the learned Division Bench of this Court on 31.07.25: "After arguing for sometime, Adv.



			<p><i>Mathew J. Nedumpara, the learned counsel would submit that he is relinquishing vakalat for the appellants writ petitioners."</i></p> <p>The same is now posted to 30.10.2025 for arguments by the new Counsel.</p>
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5. Heard arguments of the learned Counsel for the appellants-petitioners on 06.11.2025 and thereafter on 11.11.2025. We also heard the arguments of the learned Standing Counsel for Dhanlaxmi Bank Ltd. for respondents 2 to 4.

6. The learned counsel for the appellants-petitioners contended that the judgment dated 17.10.2025 of the learned Single Judge is vitiated by an error apparent on the face of the record and is thus one rendered void ab initio. Since the said judgment, which is a nullity in violation of the statutory provisions, the same is liable to be set aside. The learned counsel relied on the decision of the Constitution Bench of the Apex Court in **A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602]**. In rectifying the error, no procedural inhibitions should debar the Court because it is a well settled principle that no person should suffer by reason of any mistake of the Court. The learned counsel



contended that the earlier judgments taken note of by the learned Single Judge do not constitute res judicata, since those judgments are rendered purely on a question of law, involving no reference to any disputed questions of fact. Since recovery action against the appellants-petitioners are in violation of the statutory prohibitions in terms of Ext.P2 MSME notification dated 29.05.2015, such an action is void ab initio and, therefore, it is open to the petitioners to challenge the same repeatedly, in proceedings under Articles 32 or 226 of the Constitution of India or by way of suit or appeal and also in other collateral proceedings. The learned counsel would also rely on the decision of the Alex Court in **Shri Shri Swami Samarth Construction and Finance Solution v. NKGSB Coop. Bank Ltd. [2025 SCC OnLine SC 1566]** and Annexure A2 judgment dated 06.08.2025 in W.P.(C)No.5466 of 2025 – **M/s. PDMC Industries and others v. Ministry of Micro Small and Medium Enterprises and others [2025:KER: 58714]**.

7. The learned Standing Counsel for Dhanlaxmi Bank Ltd. for respondents 2 to 4 contended that the reasoning of the learned Single Judge in the impugned judgment dated 17.10.2025 in W.P.(C)No.32541 of 2025 is neither perverse nor patently illegal,



warranting an interference of this Court in this intra-court appeal filed under Section 5(i) of the Kerala High Court Act, 1958. In paragraph 7 of the judgment, the learned Single Judge narrated the earlier litigations of the appellants-petitioners before this Court, as well as before the Apex Court, in respect of the proceedings initiated by the Bank under the provisions of the SARFAESI Act, claiming the protection of MSME. The earlier judgments taken note of by the learned Single Judge do constitute res judicata. The principles of constructive res judicata are also applicable.

8. M/s.M.D. Esthappan Infrastructure Pvt. Ltd. and its Managing Director M.D. Esthappan had filed W.P.(C)No.46514 of 2024 before this Court challenging the proceedings initiated by the 3rd respondent Dhanlaxmi Bank Ltd., under the provisions of the SARFAESI Act, seeking the following reliefs;

(i) To declare that the failure on the part of the Central Government/RBI to implement the MSMED notification dated 29.05.2015, in particular, to ensure that the Board of Directors of the Banks/financial institutions in this country, including the respondent Bank, constitutes a committee for 'stressed micro, small and medium enterprise' and further to prevent the Banks and NBFCs from classifying the account of an MSME as NPA and resorting to recovery under the



SARFAESI, RDB Act, IBC, NI Act, etc. in violation of the prohibition to do so as contained in paragraph 1 and 5(4)(iii) of the said notification, amounts to gross failure on their part to comply with the statutory duty cast upon them under Sections 35, 35A, 35AA, 36, 36AA of the Banking Regulation Act and Section 45-IE of the Reserve Bank of India Act, and Sections 9 and 10 of the MSMED Act;

(ii) To issue a writ in the nature of mandamus or any other appropriate writ/order or direction directing the Central Government and the RBI to enforce the notification dated 29.05.2015 in its true letter and spirit and further to direct the Central Government and the RBI to ensure that recovery action initiated against the petitioners in violation of the mandate of the notification is recalled, the clock is put back, the injustice which the petitioners is made to suffer is redressed and that the petitioners is compensated in full measure;

(iii) To declare that Section 13 of the SARFAESI Act, and Section 19 of the RDB Act, Sections 7, 9, 10 and 95 of the IBC are unconstitutional, ultra vires and void and are liable to be so declared, inasmuch as the said enactments are wholly one-sided, drafted on the grossly erroneous premise that the right to relief, nay, remedies, arise only at the hands of a banker as against the borrower and that the enquiry to be conducted is wholly one-sided, or in the alternative to declare that the borrower's right to be an actor/petitioner for the enforcement of his remedies has to be read into the said Acts;

(iv) To declare that Section 34 of the RDB Act, and Section 34 of the SARFEASI Act and Section 63 of the IBC which bar



the jurisdiction of the Civil Court to entertain and adjudicate the petitioner's/borrower's plea against the respondent Bank nay, bank/financial institution, is unconstitutional and void inasmuch as the petitioners, victims of the gross breach of contract, culpable negligence, malicious and tortious action, so too, violation of the express statutory provisions at the hands of the respondent Bank, are entitled to institute an action/suit as against the respondent Bank for the enforcement of the petitioners' right as against them;

(v) To issue a writ in the nature of certiorari or any other appropriate writ or order or direction calling for the entire records and proceedings at the hands of the Authorised Officer as well as the Addl. Chief Judicial Magistrate, Ernakulam, leading to the order dated 27.06.2024 passed by the Addl. CJM, Ernakulam, in furtherance thereof, and to quash and set aside the same as being without jurisdiction, in violation of fundamental principles of judicial procedure and most importantly, being in violation of Articles 14, 19 and 21 of the Constitution;

(vi) To declare that the 1st petitioner being an MSME within the meaning of Sections 7 and 8 of the MSMED Act of 2006, it is entitled to the benefits of the said Act and, in particular, the notification S.O.1432(E) dated 29.05.2015 issued by the Central Government under Section 9 of the Act which provides for a mechanism of resolution of stress of MSMEs, as also, the circulars and guidelines issued by the Reserve Bank of India under Section 10 of the MSMED Act and further that no proceedings for recovery of the amounts due by the MSMEs to banks/financial institutions, nay, even operational creditors, shall lie against the petitioner under the SARFAESI



Act, RDB Act, IBC, Negotiable Instruments Act or any other law, for recovery of the amounts allegedly due, inasmuch as the MSMED Act being a special law/later law in relation to the aforesaid enactments, the MSMED Act will prevail over them and recovery can be made only in accordance with article 5(4)(iii) of the aforesaid notification dated 29.05.2015;

(vii) To declare that the MSMED Act in so far as it has not created a special forum/tribunal to enforce the inter-se rights and obligations/remedies, which it has created in addition to those rights/obligations/remedies recognized by the common law, the jurisdiction of the Civil Court is not ousted, for it is impossible to oust the jurisdiction of the Civil Court without providing for an alternative forum/tribunal to adjudicate the inter se disputes between parties who are governed by the Act, and further as a corollary thereof, the DRTs, NCLTs created under the RDB Act 1993 and the Companies Act 2013 are invested of no jurisdiction to adjudicate a dispute arising out of/involving the MSMED Act;

(viii) To declare that the entire recovery steps initiated by respondent Bank under the SARFAESI Act or any other law, is without jurisdiction, illegal and void inasmuch as the respondent are not entitled to take recourse to any form of recovery of the amounts they claim to be due to them from the petitioner except in the manner permitted by the 'Committee for Corrective Action Plan' contemplated in notification S.O.1432(E) dated 29.05.2015, and quash and set aside the entire action taken by the respondent Bank under Sections 13(2), 13(4) and 14 of the SARFAESI Act/Section 19 of the RDB Act;



(ix) To declare that the petitioners are entitled to be compensated from respondents No.2 Bank for the loss and injury, which it has suffered on account of the gross breach of contract and trust, culpable negligence, and malicious and tortious action at the hands of the Bank, financial institution and its officers, which loss and injury far exceeds the very claim of the Bank as against the petitioners and therefore, no amount is due to the respondents by the petitioner and further that the respondents have no enforceable rights as against the petitioner;

(x) To award damages of Rs.70 Crores for the loss and injuries the petitioner was unjustly made to suffer by the respondent Bank with a further interest at the rate of 12% per annum from the date of a decree till the date of final payment thereof;

(xi) To declare that the guidelines and notifications issued by the Reserve Bank of India from time to time empowering the bank and financial institutions to declare a borrower as a willful defaulter is without authority of law, for such a declaration amounts to a civil death and further that the petitioners, nay, a borrower is not liable to be declared as a willful defaulter except by the authority of an Act of Parliament or statutory instrument having the force of law;

(xii) To declare that the entire recovery proceedings, under the SARFAESI Act leading to the forceful taking of possession of the petitioners' properties and sale thereof, is illegal and void ab initio, being in violation of express statutory provisions and vitiated by fraud and further to quash and set aside the same;



(xiii) To issue a writ in the nature of prohibition restraining and prohibiting respondent Bank/Financial institution, their agents, servants, officers, representatives from taking any action for recovery under the SARFAESI Act, IBC, Arbitration and Conciliation Act, Recovery of Debts and Bankruptcy Act, Negotiable Instruments Acts or any other law in respect of the amounts they falsely claim to be due from the petitioner, in particular restraining Respondent No.3, from dispossessing the petitioner of his/his company's properties;

(xiv) To issue a writ in the nature of mandamus or any other appropriate writ/order or direction directing respondent No.2, Board of Directors of the Dhanlaxmi Bank, to constitute a committee for the resolution of the stress in the unit of the petitioners Company, an MSME, as contemplated in paragraph 2 of the notification dated 29.05.2015 issued under the MSMED Act, and further to direct the Committee to resolve the stress in accordance with the said notification and such other relevant notifications/regulations framed by the RBI;

(xv) To issue a writ in the nature of mandamus or any other appropriate writ/order or direction directing respondents to put the clock back in respect of the entire action initiated under the SARFAESI Act, in particular, cancel the sale notice dated 25.06.2024, putting the petitioner's properties to sale and further to make attempts to revive the petitioner's business as mandated by the notification dated 29.05.2015;

(xvi) To declare that the various petitions which the petitioner has instituted does not constitute a Cause of Action Estoppel, nay, estoppel per rem judicatam/res judicata, not even issue estoppel, inasmuch as there is no estoppel against statute,



does not constitute cause of action estoppel, nay estoppel per rem judicatam/res judicata, or even issue estoppel inasmuch as the rights and remedies which the petitioner seeks to enforce in the instant is based on the notification dated 29.05.2015, and for the added reason that in the previous proceedings before the High Court of Kerala and other forums there was never an adjudication on merits;

(xvii) pass such further and other orders as the nature and circumstances of the case may require.

9. The interim relief sought for in W.P.(C)No.46514 of 2024 reads thus;

To grant an ad-interim injunction restraining and prohibiting the respondents, its agents, servants and privies from proceeding any further in furtherance of the action initiated under the SARFAESI Act, RDB Act, or any other law in force.

10. The writ petitioners in W.P.(C)No.46514 of 2024 filed I.A.No.1 of 2025 to amend the writ petition, which was allowed by the order dated 17.02.2025. Additional reliefs (xviii) to (xx) incorporated by way of amendment read thus;

(xviii) To declare that the circular dated 17.03.2016 restricting, nay completely taking away, the benefit of the notification dated 29.05.2015 from MSMEs whose credit limit exceeds Rs.25 crores, is illegal, ultra vires the MSMED Act/notification and void to that extent that it takes away such right;

(xix) To declare that the circulars dated 17.03.2016, 26.06.2020, and 04.06.2021 are liable to be read together,



and that by virtue of the circular dated 04.06.2021, the cap of Rs.25 crores imposed by the RBI stands altered and amended;

(xx) Without prejudice to reliefs (a) and (b) above, to issue a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the RBI to remove the cap of Rs.25 crores which it had imposed by circular dated 17.03.2016 or in the alternative to enhance it with retrospective effect to a minimum of Rs.50 crores, taking into account the revision of the definition of MSMEs from time to time enhancing the upper limit manifold time;

11. M/s.M.D. Esthappan, a sole proprietorship concern, and M.D. Esthappan, its sole proprietor, filed W.P.(C)No.45166 of 2024, challenging the proceedings initiated by the 3rd respondent Bank under the provisions of the SARFAESI Act, seeking various reliefs.

12. After considering the rival contentions, the learned Single Judge, by Ext.P17 common judgment dated 11.03.2025, dismissed W.P.(C)Nos.45166 of 2024 and 46514 of 2024 on the ground that the writ petitioners have not made out any case for the grant of the reliefs sought for in the writ petitions. Challenging Ext.P17 judgment dated 11.03.2025 in W.P.(C)No.46514 of 2024, the 1st appellant herein and its Managing Director filed W.A.No.484 of 2025. Ext.P17 judgment dated 11.03.2025 in



W.P.(C)No.45166 of 2024 was under challenge in W.A.No.481 of 2025 filed by M/s.M.D. Esthappan and its sole proprietor. After considering the rival contentions, this Court, by a common judgment dated 24.06.2025 - **M.D. Esthappan v. Reserve Bank of India [2025 KHC OnLine 655 : 2025 (4) KHC SN 28]** - dismissed both the writ appeals on a finding that the learned Single Judge cannot be found fault with in not entertaining the writ petitions for the reasons stated in the common judgment dated 11.03.2025.

13. In paragraph 9 of the decision in **M.D. Esthappan [2025 KHC OnLine 655]**, this Court has referred to the findings of the learned Single Judge in the common judgment dated 11.03.2025 in W.P.(C)Nos.45166 of 2024 and 46514 of 2024. Paragraph 9 of the said decision reads thus;

"9. After considering the rival contentions, the learned Single Judge, by a common judgment dated 11.03.2025, dismissed W.P.(C)Nos.45166 of 2024 and 46514 of 2024 on the ground that the writ petitioners have not made out any case for the grant of the reliefs sought for in the writ petitions. Identical issues have already been considered in the judgment dated 17.02.2025 in W.P.(C)No.45285 of 2024. As discernible from the common judgment dated 11.03.2025 in W.P.(C)Nos.45166 of 2024 and 46514 of 2024, before the learned Single Judge, it was not disputed



that the claims presently raised have not been raised in any previous litigations and they have been raised for the first time only after the accounts have been classified as NPA. [see: para.8, Page 19 of the judgment] Therefore, the learned Single Judge found that in the light of the law laid down by the Apex Court in **Pro Knits v. Canara Bank [(2024) 10 SCC 292]** and by a Division Bench of this Court in **P.K. Krishnakumar v. IndusInd Bank [2024 SCC OnLine Ker 6888]** the writ petitioners are not entitled to any relief. The law laid down by the Apex Court in **Pro Knits [(2024) 10 SCC 292]** is binding on the High Court in terms of the provisions contained in Article 141 of the Constitution of India, and the law laid down by the Division Bench of this Court in **P.K. Krishnakumar [2024 SCC OnLine Ker 6888]** is also binding on the learned Single Judge, as held by a Full Bench of this Court in **Raman Gopi v. Kunju Raman Uthaman [2011 (4) KLT 458]**. The learned Single Judge found that the writ petitioners cannot have the luxury of conducting piecemeal litigations where issues are deliberately fragmented across separate proceedings to gain an unfair advantage, as held by the Apex Court in **Celir LLP v. Sumati Prasad Bafna [2024 SCC OnLine SC 3727]**. The writ petitioners, who are the borrowers, have pursued various proceedings before this Court, the Bombay High Court, and the Debts Recovery Tribunal. The learned Single Judge noticed that the writ petitioners/borrowers do not appear to have raised any claim for the benefit of the Exts.P2 framework and Ext.P3 guidelines issued by the Reserve Bank of India [in W.P.(C)No.46514 of 2024] at any earlier stage before this Court. The learned Single Judge



noticed further that Ext.R2(a) communication dated 28.01.2025 produced along with the statement filed by the learned Standing Counsel for the 3rd respondent Bank in W.P.(C)No.45166 of 2024 indicates that the Bank had actually informed the writ petitioners that their accounts are in Special Mention Account (SMA) category and called upon them to submit proposals. However, no proposals were submitted by the writ petitioners. At least, when the writ petitioners had received Ext.R2(a), they should have sought a reference to the committee constituted in terms of Ext.P2. In **Abdul Nazer v. Union Bank of India [2023 (5) KHC 543]**, a learned Single Judge of this Court held that, on a reading of clause (1) of the Framework issued under the MSME Act, it can be seen that it is only an optional framework available to the bank and the borrower. The said framework in the notification cannot prevail over the statutory provisions of the SARFAESI Act in the matter of recovery of loans. As per Section 24 of the MSME Act, only the provisions of Sections 15 to 23 are given precedence over other laws. Section 9 or the notifications issued thereunder cannot prevail over the statutory provisions of the SARFAESI Act. In the decision of the Apex Court in **Kotak Mahindra Bank Limited v. Girnar Corrugators (P) Ltd. [(2023) 3 SCC 210]**, it has been held that the SARFAESI Act will prevail over the MSME Act. In the impugned judgment, the learned Single Judge noticed that Ext.P2 notification in W.P.(C)No. 46514 of 2024 has been issued in the exercise of the power conferred by Section 9 of the MSME Act. Therefore, the learned Single Judge agreed with the view expressed by the learned judge in



Abdul Nazer [2023 (5) KHC 543]. The learned Single Judge noticed further that Ext.P3 guidelines in W.P.(C)No.46514 of 2024 issued by the Reserve Bank of India provide that restructuring of loan accounts with exposure of above Rs.25 Crore will continue to be governed by the extant guidelines on Corporate Debt Restructuring (CDR)/Joint Lender's Forum (JLF) mechanism. It is not disputed that the liability in the loan accounts, which are the subject matter of W.P.(C)No.46514 of 2024, are in excess of Rs.25 crore. Therefore, the petitioners in W.P.(C)No.46514 of 2024 are not entitled to the benefit of Exts.P2 and P3. For all these reasons, the learned Single Judge found that the writ petitioners are not entitled to any relief in the writ petitions. The learned Single Judge also found that the question of issuing notice to the Reserve Bank of India and the Union of India in the Ministry of Micro, Small, and Medium Enterprises does not arise as, on the facts of the cases, the legal issue stands covered against the writ petitioners, as already noticed above. Therefore, the writ petitions were dismissed by the impugned common judgment." (underline supplied)

14. In paragraph 16 of the decision in **M.D. Esthappan [2025 KHC OnLine 655]**, this Court quoted paragraphs 3 and 4 of the judgment dated 11.03.2025 of the learned Single Judge, in which the learned Single Judge has referred to the contentions advanced by the learned counsel for the petitioners in



W.P.(C)Nos.45166 of 2024 and 46514 of 2024. Paragraph 16 of the decision reads thus;

"16. In paragraphs 3 and 4 of the impugned judgment dated 11.03.2025, the learned Single Judge has referred to the contentions advanced by the learned counsel for the writ petitioners. Paragraphs 3 and 4 of the impugned judgment read thus;

3. Sri. Mathews J. Nedumpara, the learned counsel appearing for the petitioners would submit that the borrowers are entitled to the benefits of the framework for revival and rehabilitation of Micro, Small and Medium Enterprises as contained in the notification produced as Ext.P2 in W.P.(C)No.46514 of 2024. It is submitted that Ext.P2 is binding on the Bank in terms of Ext.P3 Circular dated 17.03.2016 issued by the RBI. It is submitted that, when a unit is registered as MSME, Ext.P2 requires that the loan account shall be referred to a committee known as the Committee for Stressed Micro, Small and Medium Enterprises for the implementation of a corrective action plan which may include rectification and restructuring and only when rectification or restructuring is not possible, can the Bank proceed for recovery. It is submitted that the framework contains detailed guidelines for restructuring/rectification and any action for recovery without considering the scope of rectification or restructuring would be contrary to the statutory framework and the guidelines issued by the RBI.



4. It is submitted that the judgment of the Supreme Court in **Pro Knits v. Canara Bank [(2024) 10 SCC 292]** deals with the situation where no claim was made by the unit in question that it was an MSME. It is submitted that where the Bank does not dispute that the borrower is an MSME, the question of identification upon a claim being raised by the borrower that the matter is to be referred to the Committee for a corrective action plan as noticed above does not arise. It is submitted that it is clear from the judgment in **Pro Knits** (supra), especially paragraph No.16 thereof that where there are materials already before the Bank which show that the borrower is to be classified as an MSME, the failure of the Bank to refer the issue for consideration of the Committee is clearly illegal and contrary to the circulars issued by the RBI. It is submitted that the judgment of the Division Bench of this Court in **P.K. Krishnakumar v. IndusInd Bank [2024 SCC OnLine Ker 6888]** does not lay down the correct law and cannot be treated as a binding precedent. It is submitted that the judgment of the Supreme Court in **Zee Telefilms Ltd. v. Union of India [(2005) 4 SCC 649]** is the authority for the proposition that no judgment should be read as a statute. It is submitted that the recent judgment of the Supreme Court in **NBCC (India) Ltd. v. The State of West Bengal [2025 SCC OnLine SC 73]** establishes that MSMEs are the backbone of the economy and provide employment to 62% of the country's workforce,



contribute 30% to India's GDP and account for around 45% of India's total exports. It is submitted that it is in this background that the framework for revival and rehabilitation of MSMEs has been conceived and, therefore, the rights conferred on the borrowers under the provisions of the framework should not be denied to them. It is submitted that the petitioners are entitled to a direction that all proceedings under the SARFAESI Act shall remain suspended till action in terms of the Ext.P2 framework is taken by the respondent Bank. The learned counsel also refers to the reliefs sought in both the writ petitions and states that the matter should not be decided without issuing notice to the various authorities, including the RBI and the Union of India in the Ministry of Micro, Small and Medium Enterprises."

15. In paragraph 17 of the decision in **M.D. Esthappan [2025 KHC OnLine 655]**, this Court quoted paragraphs 5 and 6 of the judgment dated 11.03.2025 of the learned Single Judge, in which the learned Single Judge has referred to the contentions advanced by the learned Standing Counsel for the 3rd respondent Bank. Paragraph 17 of the said decision reads thus;

"17. In paragraphs 5 and 6 of the impugned judgment dated 11.03.2025, the learned Single Judge has referred to the contentions advanced by the learned Standing Counsel for the 3rd respondent Bank. Paragraphs 5 and 6 of the impugned judgment read thus;



5. Sri. C.K. Karunakaran, the learned counsel appearing for the respondent Bank, vehemently opposes the grant of any relief to the petitioners. It is submitted that the issue raised in these writ petitions is squarely covered against the petitioners by the judgment of the Supreme Court in **Pro Knits** (supra) as also the judgment of the Division Bench of this Court in **P.K. Krishnakumar** (supra). It is submitted that a reading of the judgment of the Supreme Court in **Pro Knits** (supra) will indicate beyond doubt that a claim for restructuring, etc., in terms of Ext.P2 framework will arise only if such claim is made by the borrower prior to the declaration of the account as 'Non-Performing Asset' (NPA). It is submitted that, in the facts of the present case, no such claim was made by the borrowers. The learned counsel appearing for the respondent Bank referred to Ext.R2(a) communication dated 28.01.2025 produced along with the statement filed in W.P.(C)No.45166 of 2024 to contend that the Bank had actually communicated to the borrowers in these cases that they are in Special Mention Account (SMA) category and calling upon the borrowers to submit a detailed action plan in respect of the points mentioned in the communication. It is submitted that the borrowers failed to submit any action plan and therefore, the Bank was forced to initiate proceedings under the SARFAESI Act against the borrowers. It is submitted that, having failed to submit any action plan pursuant to the communication issued by the Bank before the



account turned into a 'NPA' status, the borrowers cannot now contend that they are entitled to be considered in terms of Ext.P2. It is submitted that the borrowers in these cases had conducted previous litigations before this Court as is evident from Ext.P14 judgment in W.P.(C)No.38732 of 2023. It is submitted that the Managing Director of M/s.M.D. Esthappan Infrastructure Pvt. Ltd had filed W.P.(C)No.22424 of 2024 before this Court. It is submitted that the very same group has also filed W.P.(C)No.35456 of 2024 before the High Court of Bombay and has also approached the Debt Recovery Tribunal by invoking Section 17 of the SARFAESI Act. It is submitted that the borrowers had also initiated proceedings by filing a civil suit as S.T. No.18939 of 2024 before the High Court of Bombay. It is submitted that in the earlier round of litigations conducted before this Court, the borrowers had no case that they were entitled to the benefits of Exts.P2 and P3. It is submitted that in such circumstances, the issue is clearly covered against the petitioners by the judgment of the Division Bench of this Court in **P.K. Krishnakumar** (supra).

6. The learned counsel appearing for the respondent Bank also submits that the petitioners in W.P.(C)No.46514 of 2024 are also not entitled to the benefit of Exts.P2 and P3 as it is clear from a reading of Ext.P3 guidelines issued by the RBI that where the loan exposure is above Rs.25 crores, the same will continue to be governed by the guidelines for Corporate Debt Restructuring (CDR)/Joint Lenders'



Forum (JLF) mechanism and not by Ext.P2 framework.
It is submitted that the liability of the petitioners in W.P.(C)No.46514 of 2024 is in excess of Rs.25 crores.
The learned counsel for the respondent Bank also placed reliance on the judgment of the Supreme Court in **Celir LLP v. Sumati Prasad Bafna [2024 SCC OnLine SC 3727]** to contend that the petitioners are not entitled to conduct piecemeal litigations where issues are deliberately fragmented across separate proceedings to gain an unfair advantage. It is submitted that the issues raised by the petitioners are also covered against the petitioners by the judgment of this Court in W.P.(C)No.45285 of 2024, where the very same contentions had been considered and rejected following the law laid down in **P.K. Krishnakumar** (supra).” (underline supplied)

16. In paragraph 18 of the decision in **M.D. Esthappan [2025 KHC OnLine 655]**, this Court noticed that a reading of the impugned judgment dated 11.03.2025 of the learned Single Judge would show that though various reliefs, including declaratory reliefs were sought for in the writ petitions, the arguments advanced by the learned counsel for the writ petitioners were confined to the contentions referred to in paragraphs 3 and 4 of that judgment. The learned Single Judge considered the said contentions with reference to the rival contentions raised by the learned Standing Counsel for the 3rd



respondent Bank, which were noted in paragraphs 5 and 6 of the impugned judgment, and dismissed the writ petitions, after taking note of the law laid down in the decisions referred to therein.

Paragraph 18 of the said decision reads thus;

“18. A reading of the impugned judgment dated 11.03.2025 of the learned Single Judge would show that though various reliefs including declaratory reliefs were sought for in the writ petitions, the arguments advanced by the learned counsel for the writ petitioners were confined to the contentions referred to in paragraphs 3 and 4 of that judgment. The learned Single Judge considered the said contentions with reference to the rival contentions raised by the learned Standing Counsel for the 3rd respondent Bank, which were noted in paragraphs 5 and 6 of the impugned judgment, and dismissed the writ petitions, after taking note of the law laid down in the decisions referred to therein.”

17. On the facts of the cases at hand, in paragraph 19 of the decision in **M.D. Esthappan [2025 KHC OnLine 655]**, this Court noticed as follows;

“19. As already noticed hereinbefore, in W.P.(C)No.45166 of 2024, the document marked as Ext.P7 is a notice dated 16.08.2023 issued to the appellants and two others, by the 4th respondent Authorised Officer of the 3rd respondent Bank, invoking the provisions under Section 13(2) of the SARFAESI Act in respect of the credit facilities availed by the appellants, wherein it is stated that due to the default in



repayment of the secured loan/financial assistance in violation of the stipulations in the sanction terms, loan agreements and security documents, the Bank has classified the said accounts as Non-Performing Asset (NPA), as defined in clause (o) of Section 2 of the SARFAESI Act, with effect from 31.07.2023. Ext.P8 is a copy of the objection dated 11.10.2023 of the 1st appellant, under Section 13(3A) of the SARFAESI Act, to Ext.P7 notice dated 16.08.2023 of the 4th respondent Authorised Officer, wherein it is stated that the classification of the accounts as NPA, with effect from 31.07.2023, violates Ext.P5 notification dated 29.05.2015 issued by the 5th respondent Ministry under Section 9 of MSMED Act and Ext.P6 notification dated 17.03.2016 issued by the 1st respondent Reserve Bank of India. The 4th respondent received Ext.P8 objection on 16.10.2023, to which Ext.P9 reply dated 18.10.2023 was issued, pointing out that the credit facilities availed by the appellants have already been classified as NPA as on 16.08.2023, by allowing 60 days' time to close the accounts. Ext.P8 objection is only to protract the recovery proceedings initiated by the Bank. On receipt of Ext.P9 reply, the 1st appellant submitted Ext.P10 representation dated 25.10.2023. Similarly, in W.P.(C)No.46514 of 2024 the document marked as Ext.P4 is a notice dated 16.08.2023 issued to the appellants and two others, by the 4th respondent Authorised Officer of the 3rd respondent Bank, invoking the provisions under Section 13(2) of the SARFAESI Act in respect of the credit facilities availed by the appellants, wherein it is stated that due to the default in repayment of the secured loan/financial assistance in



violation of the stipulations in the sanction terms, loan agreements and security documents, the Bank has classified the said accounts as Non-Performing Asset (NPA), as defined in clause (o) of Section 2 of the SARFAESI Act, with effect from 31.07.2023. Ext.P5 is a copy of the objection dated 11.10.2023 of the 1st appellant, under Section 13(3A) of the SARFAESI Act, to Ext.P4 notice dated 16.08.2023 of the 4th respondent Authorised Officer, wherein it is stated that the classification of the accounts as NPA, with effect from 31.07.2023, violates Ext.P2 notification dated 29.05.2015 issued by the 5th respondent Ministry under Section 9 of MSMED Act and Ext.P3 notification dated 17.03.2016 issued by the 1st respondent Reserve Bank of India. The 4th respondent received Ext.P5 objection on 16.10.2023, to which Ext.P6 reply dated 18.10.2023 was issued, pointing out that the credit facilities availed by the appellants have already been classified as NPA as on 16.08.2023, by allowing 60 days' time to close the accounts. Ext.P8 objection is only to protract the recovery proceedings initiated by the Bank. On receipt of Ext.P6 reply, the 1st appellant submitted Ext.P7 representation dated 25.10.2023. In the impugned judgment, the learned Single Judge noticed that Ext.R2(a) communication dated 28.01.2025 produced along with the statement filed by the learned Standing Counsel for the 3rd respondent Bank in W.P.(C)No.45166 of 2024 indicates that the Bank had actually informed the writ petitioners that their accounts are in Special Mention Account (SMA) category and called upon them to submit proposals. However, no proposals were submitted by the writ petitioners.”



18. In the decision in **M.D. Esthappan [2025 KHC OnLine 655]**, this Court held that in view of the law laid down by the Apex Court in **Pro Knits v. Canara Bank [(2024) 10 SCC 292]** and that laid down by the Division Bench of this Court in **P.K. Krishnakumar v. IndusInd Bank [2024 SCC OnLine Ker 6888]** if, at the stage of classification of the loan accounts as NPA, the writ petitioners-borrowers do not bring to the notice of the Bank that it is an MSME and allowed the proceedings under the SARFAESI Act to go through, then they will be precluded from raising it at the belated stage. Paragraphs 25 to 28 of the decision read thus;

“25. In **Pro Knits [(2024) 10 SCC 292]**, the Apex Court found that the framework for Revival and Rehabilitation of MSMEs also enables the Micro, Small or Medium Enterprise to voluntarily initiate the proceedings under the said framework, by filing an application along with the affidavit of an authorised person. Therefore, the stage of identification of incipient stress in the loan account of MSMEs and categorisation under the Special Mention Account category, before the loan account of MSME turns into Non-Performing Asset is a very crucial stage, and therefore it would be incumbent on the part of the MSME concerned also to produce authenticated and verifiable documents/material for substantiating its claim of being MSME, before its account is classified as Non-Performing



Asset. If that is not done, and once the account is classified as a Non-Performing Asset, the banks, i.e., the secured creditors, would be entitled to take recourse to Chapter III of the SARFAESI Act for the enforcement of the security interest. If at the stage of classification of the loan account of the borrower as Non-Performing Asset, the borrower does not bring to the notice of the bank/creditor concerned that it is a Micro, Small or Medium Enterprise under the MSMED Act and if such an enterprise allows the entire process for enforcement of security interest under the SARFAESI Act to be over, or it having challenged such action of the bank/creditor concerned in the court of law/tribunal and having failed, such an enterprise could not be permitted to misuse the process of law for thwarting the actions taken under the SARFAESI Act by raising the plea of being an MSME at a belated stage.

26. In **P.K. Krishnakumar [2024 SCC OnLine Ker 6888]**, the specific contention raised before the Division Bench was that, though it is correct that the appellants have not raised the ground of the enterprise being an MSME at an early stage and in the earlier round of writ petitions, the appellants cannot be estopped from raising legal contentions which go to the root of the case. In paragraph 14 of the judgment, the Division Bench extracted paragraphs 16 and 17 of the decision of the Apex Court in **Pro Knits [(2024) 10 SCC 292]** and stated in categorical terms that the dicta laid down by the Apex Court is that if, at the stage of classification of the loan account, the borrower does not bring to the notice of the Bank that it is an MSME and allow the entire process to go through, then it



will be precluded from raising it at the belated stage. In the said decision, the Division Bench found that the argument of the appellants that the High Court must intervene, no matter how they conducted themselves, proceeds on a complete misunderstanding of the nature of the writ jurisdiction.

27. In the instant case, as stated in the notices dated 16.08.2023 issued by the authorised officer of the 3rd respondent Bank, which are marked as Ext.P7 in W.P.(C)No.45166 of 2024 and Ext.P4 in W.P.(C)No.46514 of 2024, the borrowers and guarantors of the respective loan accounts were informed that the Bank has classified the said accounts as NPA, with effect from 31.07.2023. In the objection dated 11.10.2023 of the respective borrowers to the notice issued under Section 13(2) of the SARFAESI Act, which are marked as Ext.P8 in W.P.(C)No.45166 of 2024 and Ext.P5 in W.P.(C)No.46514 of 2024, it was pointed out that the classification of the loan accounts as NPA, with effect from 31.07.2023 violates Ext.P5 notification dated 29.05.2015 issued by the 5th respondent Ministry under Section 9 of MSMED Act and Ext.P6 notification dated 17.03.2016 issued by the 1st respondent Reserve Bank of India. In paragraph 8 at page 19 of the impugned judgment dated 11.03.2025, the learned Single Judge noticed that it was not disputed that the claims presently raised have not been raised in any previous litigations and they have been raised for the first time only after the accounts have been classified as NPA.

28. In view of the law laid down by the Apex Court in **Pro Knits [(2024) 10 SCC 292]** and that laid down by the



Division Bench of this Court in **P.K. Krishnakumar [2024 SCC OnLine Ker 6888]** if, at the stage of classification of the loan accounts as NPA, the writ petitioners-borrowers do not bring to the notice of the Bank that it is an MSME and allowed the proceedings under the SARFAESI Act to go through, then they will be precluded from raising it at the belated stage. The learned Single Judge, after taking note of the law laid down in the decisions referred to supra, arrived at a conclusion that the writ petitioners-borrowers are not entitled to raise the plea of being an MSME at a belated stage, having failed to bring to the notice of the 3rd respondent Bank that it is an MSME before classification of the loan accounts as NPA.”

19. In the decision in **M.D. Esthappan [2025 KHC OnLine 655]**, this Court has also referred to the law laid down by the Apex Court in **Kotak Mahindra Bank Ltd. v. Girnar Corrugators (P) Ltd. [(2023) 3 SCC 210]** and **South Indian Bank Ltd. v. Naveen Mathew Philip [2023 SCC online (SC) 435]** on the maintainability of a writ petition under Article 226 of the Constitution of India, instead of approaching the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. In paragraph 33 of the common judgment dated 24.06.2025, this Court noticed that the petitioners in W.P.(C)No.46514 of 2024 challenged the classification of the accounts as NPA, by filing W.P.(C)No.38732 of 2023. This Court, by Ext.P14 judgment dated



27.11.2023 closed the said writ petition, by relegating them to invoke the remedy provided before the statutory forum. Thereafter, the 1st petitioner in W.P.(C)No.46514 of 2024 - M/s.M.D. Esthappan Infrastructure Pvt. Ltd. - filed W.P.(C)No. 22424 of 2024, when recovery steps were taken against the secured assets. In that writ petition, this Court found that no relief can be granted to the writ petitioner and the same was disposed of by relegating the writ petitioner to avail the statutory remedy provided before the Debts Recovery Tribunal. The writ petitioners in W.P.(C)No.46514 of 2024 challenged the proceedings initiated by the 3rd respondent Bank under the provisions of the SARFAESI Act, by filing a Securitisation Application before the Debts Recovery Tribunal-1, Ernakulam, as S.A.No.776 of 2023. The said Securitisation Application was dismissed as withdrawn on 12.02.2025, with liberty to file fresh Securitisation Application on the same cause of action, based on a memo filed by the learned counsel for the applicants that the applicants have approached the civil court and the High Court, invoking their statutory remedy.

20. In the decision in **M.D. Esthappan [2025 KHC OnLine 655]**, this Court found that the learned Single Judge, after considering the rival contentions raised at the Bar, found that



W.P.(C)Nos.45166 of 2024 and 46514 of 2024 are liable to be dismissed. The learned Single Judge cannot be found fault with in not entertaining the writ petitions, for the reasons stated in the common judgment dated 11.03.2025.

21. Seeking review of the common judgment dated 24.06.2025, in W.A.Nos.481 of 2025 and 484 of 2025 - **M.D. Esthappan [2025 KHC OnLine 655]** - the appellants in those writ appeals filed R.P.Nos.797 of 2025 and 799 of 2025, invoking the provisions under Order XLVII Rule 1 of the Code of Civil Procedure, 1908. The grounds raised by the review petitioners in R.P.No.797 of 2025, for seeking review of the judgment of this Court dated 24.06.2025 in W.A.No.484 of 2025, read thus;

"A. The impugned judgement suffers from factual and legal errors apparent on the face of the judgement, that a review of the same is warranted.

B. As per the interpretative rule of plain and literal interpretation, Ext.P2/notification does not permit this Hon'ble Court's interpretation that only if the MSME-borrower brings it to the notice of the creditor, prior to the classification of its account/s as an NPA, that it is an MSME entitled to the benefits of Ext.P2/notification, the MSME-borrower can rely on Ext.P2, or that Ext.P2 does not have applicability if the MSME-borrower does not bring to the notice of the secured creditor of its MSME-status.

C. Ext.P2 mandates the secured creditor, de hors any action



on the part of the MSME-borrower, to identify and assuage incipient stress faced by MSME-borrowers, and assuage it by various measures including restructuring, additional finance, revival etc.

D. This Hon'ble Court failed to consider and apply the law laid down by the Hon'ble Supreme Court in M/s. Pro Knits vs. The Board of Directors of Canara Bank and Others, 2024 SCC OnLine SC 1864, in its proper perspective. It was laid down therein that the procedure prescribed in Ext. P2/notification is mandatory and ought to be complied with by creditor before any initiation of recovery proceedings against MSME-borrowers.

E. There is no estoppel against a statute, and the petitioners cannot be barred from relying on Ext.P2/statutory notification mandating a procedure to be followed before initiating recovery measures against an MSME-borrower.

F. This Hon'ble Court is vested with jurisdiction to entertain all cases involving violation of statutory provision, in spite of the availability of a statutory remedy against the secured creditor.

G. The findings of this Hon'ble Court reduce Ext.P2 to redundancy, defeating the object of the MSMED Act, 2006. In addition to directing banks and other creditors to follow the procedure laid down as regards stressed MSME borrowers, Ext. P2 also permits MSME-borrowers to apply to the banks for the benefit of the notification."

The very same grounds are raised in R.P.No.799 of 2025, filed seeking review of the judgment of this Court dated 24.06.2025 in W.A.No.481 of 2025.



22. Relying on the decision of a Constitution Bench of the Apex Court in **A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602]**, the learned counsel for the review petitioners contended that in rectifying the error, no procedural inhibitions should debar the Court because it is a well settled principle that no person should suffer by reason of any mistake of the Court. If an order is irregular, it can be set aside by the court that made it, on an application being made to that court either under rules of the court dealing expressly with setting aside orders for irregularity or *ex debito justitiae*, if the circumstances warranted, namely, where there was a breach of rules of natural justice, etc.

23. Relying on the decision of the Apex Court in **Canara Bank v. N.G. Subbaraya Setty [(2018) 16 SCC 228]**, the learned counsel for the review petitioners contended that an issue of law which arises between the same parties in a subsequent suit or proceeding is not *res judicata*, if by an erroneous decision given on a statutory prohibition in a former suit or proceeding, the statutory prohibition is given effect to. In such cases, the rights of the parties are not the only matter for consideration, as in the case of an erroneous interpretation of a statute *inter partes*, as the public policy contained in the statutory prohibition cannot be



set at naught.

24. The learned Standing Counsel for Dhanlaxmi Bank Ltd. contended that the grounds raised in these review petitions would make it explicitly clear that the review petitions are appeals in disguise. If the view adopted by this Court in the judgment sought to be reviewed is a possible view, it cannot be contended that there is error apparent on the face of the record, warranting interference in the exercise of the power of review under Order XLVII Rule 1 of the Code of Civil Procedure, 1908.

25. On 11.07.2025, when the review petitions came up for consideration, the learned Standing Counsel for Dhanlaxmi Bank Ltd. pointed out that SLP(C)No.17263 of 2025 filed by the petitioners in R.P.No.797 of 2025 against the judgment of this Court dated 24.06.2025 in W.A.No.484 of 2025 ended in dismissal by the order of the Apex Court dated 09.07.2025.

26. By the order dated 28.07.2025, this Court dismissed R.P.Nos.797 of 2025 and 799 of 2025, holding that none of the grounds raised in the review petitions, which have been extracted in paragraph 6 of the order dated 28.07.2025, would fall within the purview of review jurisdiction under Order XLVII Rule 1 of the Code of Civil Procedure, 1908. The judgment sought to be



reviewed is one rendered after taking note of the rival contentions on the law laid down by the Apex Court in **Pro Knits [(2024) 10 SCC 292]** and that laid down by the Division Bench of this Court in **P.K. Krishnakumar [2024 SCC OnLine Ker 6888]**. There is no error apparent on the face of the record, warranting an interference in the exercise of the review jurisdiction under Order XLVII Rule 1 of the Code. Paragraphs 17 to 19 and also the last paragraph of the order dated 28.07.2025 read thus;

“17. On the scope of the power of review under Order XLVII Rule 1 of the Code of Civil Procedure, 1908, the Apex Court in **Thungabhadra Industries Ltd v. Government of Andhra Pradesh [AIR 1964 SC 1372]** held that review is, by no means an appeal in disguise, whereby an erroneous decision is reheard and corrected, but lies only for correcting patent errors. In **Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi [(1980) 2 SCC 167]**, the Apex Court held that, if the view adopted by the court in the original judgment is a possible view, having regard to what the record states; it is difficult to hold that there is error apparent on the face of the record. In **Parsion Devi v. Sumitri Devi [(1997) 8 SCC 715]** the Apex Court held that, a judgment may be open to review *inter alia* if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to



exercise its power of review under Order XLVII, Rule 1 of the Code. In exercise of the review jurisdiction, it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'.

18. In **Lily Thomas v. Union of India [(2006) 3 SCC 224]** the Apex Court reiterated that, the power of review can be exercised for correction of a mistake but not to substitute a view. The review cannot be treated like 'an appeal in disguise'. The mere possibility of two views on the subject is not a ground for review. In **Anantha Reddy N. v. Anshu Kathuria [(2013) 15 SCC 534]** the Apex Court held that the review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the judgment does not call for review. The mistake apparent on record means that the mistake is self-evident, needs no search and stares at its face. Surely, review jurisdiction is not 'an appeal in disguise'. The review does not permit rehearing of the matter on merits.

19. Viewed in the light of the law laid down in the decisions referred to supra, none of the grounds raised in these review petitions, which we have extracted hereinbefore at paragraph 6, would fall within the purview of review jurisdiction under Order XLVII Rule 1 of the Code of Civil Procedure, 1908. The judgment sought to be reviewed is one rendered after taking note of the rival contentions on the law laid down by the Apex Court in **Pro Knits [(2024) 10 SCC 292]** and that laid down by the Division Bench of this Court in **P.K. Krishnakumar [2024 SCC OnLine Ker 6888]**. There is no error apparent on the face of record,



warranting an interference in exercise of the review jurisdiction under Order XLVII Rule 1 of the Code.

In the above circumstances, these review petitions fail and they are accordingly dismissed.”

27. SLP(C)No.17263 of 2025 filed by the appellants-petitioners challenging the judgment dated 24.06.2025 in W.A.No.484 of 2025 ended in dismissal by the order dated 09.07.2025. M.A.No.1330 of 2025 filed by the appellants to restore the dismissed SLP also ended in dismissal by the order dated 28.07.2025. The appellants filed W.P.(C)No.17617 of 2025 challenging simultaneous recourse under the SARFAESI Act and the Recovery of Debts and Bankruptcy Act, 1993, by contending that the decision of the Apex Court in **Transcore v. Union of India [AIR 2007 SC 712]** was wrongly decided and *per curiam*. The said writ petition was dismissed by the judgment dated 28.07.2025 of the learned Single Judge. W.A.No.1872 of 2025 filed by the appellants is pending consideration.

28. In **A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602]**, a decision relied on by the learned counsel for the appellants-petitioners, the following questions came up for consideration before a Constitution Bench of the Apex Court: (i) whether the directions given by the Court in the order dated 16.02.1984 - **R.S.**



Nayak v. A.R. Antulay [(1984) 2 SCC 183] - were legally proper; (ii) whether the action and the trial proceedings pursuant to those directions, are legal and valid; and (iii) can those directions be recalled or set aside or annulled in the proceedings in question, in the manner sought for by the appellant.

28.1. In **A.R. Antulay [(1988) 2 SCC 602]**, the Constitution Bench relied on the law laid down by a Two-Judge Bench in **Nawabkhan Abbaskhan v. State of Gujarat [(1974) 2 SCC 121]** that an order passed without hearing a party which affects his fundamental rights, is void and as soon as the order is declared void by a court, the decision operates from its nativity. It is proper for the Apex Court to act ex debito justitiae, to act in favour of the fundamental rights of the appellant. The Constitution Bench held that the principle of finality on which Article 145(e) of the Constitution of India proceeds applies to both judgments and orders made by the Apex Court. But directions given per incuriam and in violation of certain constitutional limitations and in derogation of the principles of natural justice can always be remedied by the Apex Court ex debito justitiae. The Privy Council in **Isaacs v. Robertson [(1984) 3 All ER 140]** held that orders made by a court of unlimited jurisdiction in the course of



contentious litigation are either regular or irregular. If an order is regular, it can only be set aside by an appellate court; if it is irregular, it can be set aside by the court that made it on application being made to that court either under rules of court dealing expressly with setting aside orders for irregularity or *ex debito justitiae*, if the circumstances warranted, namely, where there was a breach of the rules of natural justice, etc.

28.2. In **A.R. Antulay [(1988) 2 SCC 602]**, the Constitution Bench was dealing with a case in which, by the order dated 16.02.1984, in an appeal filed by the 1st respondent directly under Article 136 of the Constitution of India, a Constitution Bench of the Apex Court held that a member of the Legislative Assembly is not a public servant and set aside the order of the Special Judge, Greater Bombay. In the said appeal, the Court was mainly concerned with the question as to whether a sanction to prosecute was necessary. It was held that no such sanction is necessary in the facts and circumstances of the case. Instead of remanding the case to the Special Judge for disposal in accordance with law, the Apex Court suo motu withdrew Special Cases Nos.24 of 1982 and 3 of 1983 pending in the Court of Special Judge, Greater Bombay, and transferred the same to the Bombay High Court, with a



request to the Chief Justice to assign these two cases to a sitting Judge of the High Court for holding the trial from day to day. The appellant contended that these directions were given without any pleadings, without any arguments, without any such prayer from either side, and without giving any opportunity to the appellant to make his submissions before issuing the same. It was contended that the appellant's right to be tried by a competent court according to the procedure established by law enacted by Parliament and his rights of appeal and revision to the High Court under Section 9 of the Criminal Law Amendment Act, 1952 had been taken away. Pursuant to the directions of the order of the Apex Court dated 16.02.1984, the Chief Justice of the Bombay High Court assigned the cases to S.N. Khatri. J. The appellant appeared before Khatri, J., and objected that the case could be tried only by a Special Judge appointed by the Government under the Criminal Law Amendment Act, 1952. Khatri, J., by the order dated 13.03.1984, refused to entertain the appellant's objection to jurisdiction, holding that he was bound by the order of the Apex Court. By another order dated 16.03.1984, Khatri, J., dealt with the other contentions raised as to his jurisdiction and rejected the objections of the appellant. Being aggrieved, the appellant came



up before the Apex Court by filing Special Leave Petitions as well as a writ petition. The Apex Court on 17.04.1984 - **Abdul Rehman Antulay v. Union of India [(1984) 3 SCR 482]** held that the learned Judge was perfectly justified, and indeed it was the duty of the learned Judge to follow the decision of the Apex Court, which was binding on him. D.N. Mehta, J., to whom the cases were transferred from Khatri, J., framed charges under 21 heads and declined to frame charges under 22 other heads proposed by the 1st respondent. The Apex Court allowed the appeal by special leave preferred by the 1st respondent, except with regard to three draft charges under Section 384 of the Indian Penal Code, 1860 (extortion), and directed the court below to frame charges with regard to all other offences alleged. The Apex Court requested the Chief Justice of the Bombay High Court to nominate another judge in place of D.N. Mehta, J., to take up the trial and proceed expeditiously to dispose of the case finally - **R.S. Nayak v. A.R. Antulay [(1986) 2 SCC 716]**. P.S. Shah, J., to whom the cases were referred from D.N. Mehta. J. on 24.07.1986 proceeded to frame as many as 79 charges against the appellant and decided not to proceed against the other named co-conspirators. The said order dated 24.07.1986 was under



challenge before the Apex Court in Crl. Appeal No. 468 of 1986, questioning the jurisdiction to try the case in violation of the appellant's fundamental rights conferred by Articles 14 and 21 of the Constitution of India and the provisions of the Criminal Law Amendment Act, 1952. The appellant also filed SLP (Cri)No.2518 of 1986, against the judgment and order dated 21.08.1986 of P.S. Shah, J., holding that none of the 79 charges framed against the accused required sanction under Section 197(1) of the Criminal Procedure Code, 1973. The appellant also filed W.P.(C)No.542 of 1986, challenging a portion of Section 197(1) of the Code as ultra vires Articles 14 and 21 of the Constitution of India.

28.3. In **A.R. Antulay [(1988) 2 SCC 602]**, the Constitution Bench found that the aforesaid directions were void because the power was not there for the Apex Court to transfer a proceeding under the Criminal Law Amendment Act, 1952, from one Special Judge to the High Court. This is not a case of collateral attack on a judicial proceeding; it is a case where the court, having no court superior to it, rectifies its own order. The distinction between an error that entails the absence of jurisdiction and an error made within the jurisdiction is very fine. So fine indeed that it is rapidly being eroded, as observed by Lord Wilberforce



in **Anisminic Ltd. v. Foreign Compensation Commissioner [(1969) 1 All ER 208]**. Having regard to the enormity of the consequences of the error to the appellant and by reason of the fact that the directions were given suo motu, the Constitution Bench do not find there is anything in the observations of **Ittavira Mathai v. Varkey Varkey [AIR 1964 SAC 907]** which detract the power of the court to review its judgment *ex debito justitiae* in case injustice has been caused.

29. In the instant case, while dismissing W.P.(C)Nos.45166 of 2024 and 46514 of 2025, by the common judgment dated 11.03.2025, the learned Single Judge noticed that Ext.P3 guidelines in W.P.(C)No.46514 of 2024 issued by the Reserve Bank of India provide that restructuring of loan accounts with exposure of above Rs.25 Crore will continue to be governed by the extant guidelines on Corporate Debt Restructuring (CDR)/Joint Lender's Forum (JLF) mechanism. It is not disputed that the liability in the loan accounts, which are the subject matter of W.P.(C)No.46514 of 2024, is in excess of Rs.25 Crore. Therefore, the petitioners in W.P.(C)No.46514 of 2024 are not entitled to the benefit of Exts.P2 and P3. In paragraph 18 of the decision in **M.D. Esthappan [2025 KHC OnLine 655]** –



Judgment dated 11.03.2025 in W.A.Nos.481 of 2025 and 484 of 2025 - this Court noticed that a reading of the common judgment dated 11.03.2025 in W.P.(C)Nos.45166 of 2024 and 46514 of 2024 of the learned Single Judge would show that though various reliefs, including declaratory reliefs were sought for in the writ petitions, the arguments advanced by the learned counsel for the writ petitioners were confined to the contentions referred to in paragraphs 3 and 4 of that judgment. The learned Single Judge considered the said contentions with reference to the rival contentions raised by the learned Standing Counsel for the 3rd respondent Bank, which were noted in paragraphs 5 and 6 of the impugned judgment, and dismissed the writ petitions, after taking note of the law laid down in the decisions referred to therein. Therefore, we find absolutely no merit in the argument of the learned counsel for the appellants-petitioners that, in view of the law laid down by the Constitution Bench of the Apex Court in **A.R. Antulay [(1988) 2 SCC 602]**, the common judgment dated 11.03.2025 in W.P.(C)Nos.45166 of 2024 and 46514 of 2024 of the learned Single Judge in the earlier round of litigation, is liable to be recalled or set aside or annulled by this Court in the subsequent proceedings.



30. In **Shri Shri Swami Samarth Construction and Finance Solution v. NKGSB Coop. Bank Ltd. [2025 SCC OnLine SC 1566]**, a decision relied on by the learned counsel for the appellants-petitioners, a Two-Judge Bench of the Apex Court observed that a micro, small and medium enterprise, despite finding that its business is failing or that it is unable to pay its debts or accumulation of losses equals to half or more of its entire net worth and classification of its account as non-performing asset is imminent, it would rest on its oars believing that it has no responsibility and that its account will not be classified as non-performing asset because it is the entire obligation of the lending bank/secured creditor to do what the framework requires. The Two-Judge Bench said that it would read and interpret the seemingly confusing terms of the Framework harmoniously to ensure that a right under the Micro, Small and Medium Enterprise Act is not destroyed by the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, or vice versa. The terms of the framework do not prohibit the lending bank/secured creditor (assuming that it has no conscious knowledge that the defaulting borrower is a micro, small and medium enterprise) to classify the account of the defaulting



micro, small and medium enterprise as non-performing asset and to even issue the demand notice under section 13(2) of the SARFAESI Act, without such identification of incipient stress in the account of the defaulting borrower (MSME); however, upon receipt of the demand notice, if such borrower in its response under section 13(3A) of the SARFAESI Act asserts that it is a micro, small and medium enterprise and claims the benefit of the said Act, citing reasons supported by an affidavit, the lending bank/secured creditor would then be mandatorily bound to look into such claim keeping further action under the SARFAESI Act in abeyance; and should the claim be found to be worthy of acceptance within the framework of the framework, to act in terms thereof for securing revival and rehabilitation of the defaulting borrower. In paragraph 8 of the said decision, the Two-Judge Bench referred to the decision of a co-ordinate Bench in **Pro Knits [(2024) 10 SCC 292]** holding, inter alia, that the notification is binding on the lending banks/secured creditors. The Two-Judge Bench, while dismissing the writ petition on the ground that no case for interference under Article 32 of the Constitution has been made out, made it clear that the petitioning enterprise will be at liberty to pursue its remedy under section 17 of the



SARFAESI Act, in accordance with law. After noting the arguments advanced by the learned counsel for the petitioning enterprise at paragraph 3 of the decision, the Two-Judge Bench stated at paragraph 4 of the said decision that the respondents are not required to be issued with notice since the Bench is not persuaded to agree with any of the submissions advanced by the learned counsel for the petitioning enterprise. The above decision of the Two-Judge Bench was relied on by the learned Single Judge in Annexure A2 judgment dated 06.08.2025 in W.P.(C)No.5466 of 2025 – **M/s. PDMC Industries and others v. Ministry of Micro Small and Medium Enterprises and others [2025:KER: 58714]**.

31. In **Daryao v. State of U.P. [AIR 1961 SC 1457]**, the question came up for consideration before a Constitution Bench of the Apex Court was a preliminary objection against the maintainability of the writ petitions on the ground that in each case the petitioners had moved the High Court for a similar writ under Article 226 of the Constitution of India and the High Court has rejected the said petitions. The argument was that the dismissal of a writ petition filed by a party for obtaining an appropriate writ creates a bar of res judicata against a similar



petition filed in the Apex Court under Article 32, on the same or similar facts and praying for the same or similar writ.

31.1. In **Daryao [AIR 1961 SC 1457]**, before the Constitution Bench, it was contended by the petitioners that the principle of res judicata, which is no more than a technical rule similar to the rule of estoppel, cannot be pleaded against a petition that seeks to enforce the fundamental rights guaranteed by the Constitution. The right to move the Apex Court for the enforcement of fundamental rights, which is guaranteed by Article 32(1), is itself a fundamental right, and it would be singularly inappropriate to whittle down the said fundamental right by putting it in the straightjacket of the technical rule of res judicata. On the other hand it was urged by the respondents that Article 32(1) does not guarantee to every citizen the right to make a petition under the said Article, but it merely gives him the right to move the Apex Court by appropriate proceedings. The appropriate proceedings in cases like the present would be proceedings by way of an application for special leave under Article 136 or by way of appeal under the appropriate Article of the Constitution. It was also contended that the right to move, which is guaranteed by Article 32(1), does not impose on the Apex Court an obligation



to grant the relief, because, as in the case of Article 226, so in the case of Article 32 also, the granting of leave is discretionary.

31.2. In **Daryao [AIR 1961 SC 1457]**, on the question as to whether the rule of res judicata is merely a technical rule or is based on high public policy, the Constitution Bench noted that, if the rule of res judicata itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. The rule of res judicata, as indicated in Section 11 of the Code of Civil Procedure, 1908, has no doubt some technical aspects, for instance, the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata, they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32. The Constitution Bench found that



the argument that res judicata is a technical rule, and as such is irrelevant in dealing with petitions under Article 32, cannot be accepted. Paragraph 10 of the said decision read thus;

“10. In considering the essential elements of res judicata, one inevitably harks back to the judgment of Sir William B. Hale in the leading Duchess of Kingston case [2 Smith Lead Cas 13 Ed. pp. 644, 645]. Said Sir William B. Hale “from the variety of cases relative to judgments being given in evidence in civil suits, these two deductions seem to follow as generally true: First, that the judgment of a court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question in another court; Secondly, that the judgment of a court of exclusive jurisdiction, directly upon the point, is in like manner conclusive upon the same matter, between the same parties, coming incidentally in question in another court for a different purpose”. As has been observed by Halsbury, “the doctrine of res judicata is not a technical doctrine applicable only to records; it is a fundamental doctrine of all courts that there must be an end of litigation [Halsbury's Laws of England, 3rd Edn., Vol. 15, paragraph 357, p. 185] “. Halsbury also adds that the doctrine applies equally in all courts, and it is immaterial in what court the former proceeding was taken, provided only that it was a Court of competent jurisdiction, or what form the proceeding took, provided it was really for the same cause (p. 187, paragraph 362). “Res judicata”, it is observed in Corpus Juris, “is a rule of universal law pervading every well-regulated system of



jurisprudence, and is put upon two grounds, embodied in various maxims of the common law; the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation - *interest reipublicae ut sit finis litium*; the other, the hardship on the individual that he should be vexed twice for the same cause - *nemo debet bis vexari pro eadem causa*" [Corpus Juris, Vol. 34, p. 743]. In this sense, the recognised basis of the rule of res judicata is different from that of technical estoppel. "Estoppel rests on equitable principles and res judicata rests on maxims which are taken from the Roman Law" [Ibid p. 745]. Therefore, the argument that res judicata is a technical rule and, as such, is irrelevant in dealing with petitions under Article 32 cannot be accepted."

(underline supplied)

31.3. In **Daryao [AIR 1961 SC 1457]**, the Constitution Bench found that if a judgment has been pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had no fundamental right as pleaded by him or there has been no contravention of the right proved or that the contravention is justified by the Constitution itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgments pronounced by courts of competent jurisdiction is itself



an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. Paragraphs 18 and 19 of the said decision read thus;

“18. The same question can be considered from another point of view. If a judgment has been pronounced by a court of competent jurisdiction, it is binding between the parties unless it is reversed or modified by appeal, revision or other procedure prescribed by law. Therefore, if a judgment has been pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had no fundamental right as pleaded by him or there has been no contravention of the right proved or that the contravention is justified by the Constitution itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. As Halsbury has observed: “subject to appeal and to being amended or set aside a judgment is conclusive as between the parties and their privies, and is conclusive evidence against all the world of its existence, date and legal consequences” [Halsbury's Laws of England, 3rd Edn., Vol. 22, p. 780, paragraph 1660]. Similar is the statement of the law in Corpus Juris: “the doctrine of estoppel by judgment



does not rest on any superior authority of the court rendering the judgment, and a judgment of one court is a bar to an action between the same parties for the same cause in the same court or in another court, whether the latter has concurrent or other jurisdiction [Corpus Juris Secundum, Vol. 50 (Judgments), p. 603]". This rule is subject to the limitation that the judgment in the former action must have been rendered by a court or tribunal of competent jurisdiction [Corpus Juris Secundum, Vol. 50 (Judgments), p. 603]. "It is, however, essential that there should have been a judicial determination of rights in controversy with a final decision thereon" [Ibid p. 608]. In other words, an original petition for a writ under Article 32 cannot take the place of an appeal against the order passed by the High Court in the petition filed before it under Article 226. There can be little doubt that the jurisdiction of this Court to entertain applications under Article 32, which are original, cannot be confused or mistaken or used for the appellate jurisdiction of this Court, which alone can be invoked for correcting errors in the decisions of High Courts pronounced in writ petitions under Article 226. Thus, on general considerations of public policy, there seems to be no reason why the rule of res judicata should be treated as inadmissible or irrelevant in dealing with petitions filed under Article 32 of the Constitution. It is true that the general rule can be invoked only in cases where a dispute between the parties has been referred to a court of competent jurisdiction, there has been a contest between the parties before the court, a fair opportunity has been given to both of them to prove their case, and at the end,



the court has pronounced its judgment or decision. Such a decision pronounced by a court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by the Constitution. In our opinion, therefore, the plea that the general rule of res judicata should not be allowed to be invoked cannot be sustained.

19. This Court had occasion to consider the application of the rule of res judicata to a petition filed under Article 32 in *M.S.M. Sharma v. Dr Shree Krishna Sinha* [AIR 1960 SC 1186]. In that case the petitioner had moved this Court under Article 32 and claimed an appropriate writ against the Chairman and the Members of the Committee of Privileges of the State Legislative Assembly. The said petition was dismissed. Subsequently he filed another petition substantially for the same relief and substantially on the same allegations. One of the points which then arose for the decision of this Court was whether the second petition was competent, and this Court held that it was not because of the rule of res judicata. It is true that the earlier decision on which res judicata was pleaded was a decision of this Court in a petition filed under Article 32, and in that sense, the background of the dispute was different, because the judgment on which the plea was based was a judgment of this Court and not of any High Court. Even so, this decision affords assistance in determining the point before us. In upholding the plea of res judicata, this Court observed that the question determined by the previous decision of this Court cannot be reopened in the present case and must govern the rights and obligations of the parties, which are



substantially the same. In support of this decision Sinha, C.J., who spoke for the Court, referred to the earlier decision of this Court in *Raj Lakshmi Dasi v. Banamali Sen* [(1952) 2 SCC 219 : (1953) SCR 154] and observed that the principle underlying *res judicata* is applicable in respect of a question which has been raised and decided after full contest, even though the first Tribunal which decided the matter may have no jurisdiction to try the subsequent suit and even though the subject-matter of the dispute was not exactly the same in the two proceedings. We may add incidentally that the Court which tried the earlier proceedings in the case of *Raj Lakshmi Dasi* [(1952) 2 SCC 219 : (1953) SCR 154] was a court of exclusive jurisdiction. Thus, this decision establishes the principle that the rule of *res judicata* can be invoked even against a petition filed under Article 32."

(underline supplied)

31.4. In **Daryao [AIR 1961 SC 1457]**, the Constitution Bench considered the question whether it makes any difference to the application of this rule that the decision on which the plea of *res judicata* is raised is a decision not of the Apex Court but of a High Court exercising its jurisdiction under Article 226. The Constitution Bench rejected the plea that the judgment of the High Court cannot be treated as *res judicata* on the ground that it cannot entertain a petition under Article 32. Paragraphs 22 and 23 of the said decision read thus;

"22. The next question to consider is whether it makes any



difference to the application of this rule that the decision on which the plea of res judicata is raised is a decision not of this Court but of a High Court exercising its jurisdiction under Article 226. The argument is that one of the essential requirements of Section 11 of the Code of Civil Procedure is that the Court which tries the first suit or proceeding should be competent to try the second suit or proceeding, and since the High Court cannot entertain an application under Article 32 its decision cannot be treated as res judicata for the purpose of such a petition. It is doubtful if the technical requirement prescribed by Section 11 as to the competence of the first Court to try the subsequent suit is an essential part of the general rule of res judicata; but assuming that it is, in substance even the said test is satisfied because the jurisdiction of the High Court in dealing with a writ petition filed under Article 226 is substantially the same as the jurisdiction of this Court in entertaining an application under Article 32. The scope of the writs, orders or directions which the High Court can issue in appropriate cases under Article 226 is concurrent with the scope of similar writs, orders or directions which may be issued by this Court under Article 32. The cause of action for the two applications would be the same. It is the assertion of the existence of a fundamental right and its illegal contravention in both cases and the relief claimed in both the cases is also of the same character. Article 226 confers jurisdiction on the High Court to entertain a suitable writ petition, whereas Article 32 provides for moving this Court for a similar writ petition for the same purpose. Therefore, the argument that a petition under Article 32 cannot be entertained by a High Court



under Article 226 is without any substance; and so the plea that the judgment of the High Court cannot be treated as res judicata on the ground that it cannot entertain a petition under Article 32 must be rejected.

23. It is, however, necessary to add that in exercising its jurisdiction under Article 226, the High Court may sometimes refuse to issue an appropriate writ or order on the ground that the party applying for the writ is guilty of laches and, in that sense, the issue of a high prerogative writ may reasonably be treated as a matter of discretion. On the other hand, the right granted to a citizen to move this Court by appropriate proceedings under Article 32(1), being itself a fundamental right, this Court ordinarily may have to issue an appropriate writ or order provided it is shown that the petitioner has a fundamental right which has been illegally or unconstitutionally contravened. It is not unlikely that if a petition is filed even under Article 32 after a long lapse of time considerations may arise whether rights in favour of third parties which may have arisen in the meanwhile could be allowed to be affected, and in such a case the effect of laches on the part of the petitioner or of his acquiescence may have to be considered; but, ordinarily if a petitioner makes out a case for the issue of an appropriate writ or order he would be entitled to have such a writ or order under Article 32 and that may be said to constitute a difference in the right conferred on a citizen to move the High Court under Article 226 as distinct from the right conferred on him to move this Court. This difference must inevitably mean that if the High Court has refused to exercise its discretion on the ground of laches or on the



ground that the party has an efficacious alternative remedy available to him, then, of course, the decision of the High Court cannot generally be pleaded in support of the bar of res judicata. If, however, the matter has been considered on the merits and the High Court has dismissed the petition for a writ on the ground that no fundamental right is proved or its breach is either not established or is shown to be constitutionally justified there is no reason why the said decision should not be treated as a bar against the competence of a subsequent petition filed by the same party on the same facts and for the same reliefs under Article 32. 24. In this connection, reliance has been placed on the fact that in England, habeas corpus petitions can be filed one after the other, and the dismissal of one habeas corpus petition is never held to preclude the making of a subsequent petition for the same reason. In our opinion, there is no analogy between the petition for habeas corpus and petitions filed either under Article 226 or under Article 32. For historical reasons the writ for habeas corpus is treated as standing in a category by itself; but, even with regard to a habeas corpus petition it has now been held in England in *Re Hastings (No. 2)* [(1958) 3 All ER QBD 625] that "an applicant for a writ of habeas corpus in a criminal matter who has once been heard by a Divisional Court of the Queen's Bench Division is not entitled to be heard a second time by another Divisional Court in the same Division, since a decision of a Divisional Court of the Queen's Bench Division is equivalent to the decision of all the judges of the Division, just as the decision of one of the old common law courts sitting in banc was the equivalent of the decision of



all the judges of that Court". Lord Parker, C.J., who delivered the judgment of the Court, has elaborately examined the historical genesis of the writ, several dicta pronounced by different Judges in dealing with successive writ petitions, and has concluded that "the authorities cannot be said to support the principle that except in vacation an applicant could go from Judge to Judge as opposed to going from court to court"(p. 633), so that even in regard to a habeas corpus petition it is now settled in England that an applicant cannot move one Divisional Court of the Queen's Bench Division after another. The said decision has been subsequently applied in *Re Hastings (No. 3)* [(1959) 1 All ER Ch D 698] to a writ petition filed for habeas corpus in a Divisional Court of the Chancery Division. In England, technically, an order passed on a petition for habeas corpus is not regarded as a judgment, and that places the petitions for habeas corpus in a class by themselves. Therefore, we do not think that the English analogy of several habeas corpus applications can assist the petitioners in the present case when they seek to resist the application of res judicata to petitions filed under Article 32. Before we part with the topic, we would, however, like to add that we propose to express no opinion on the question as to whether repeated applications for habeas corpus would be competent under our Constitution. That is a matter with which we are not concerned in the present proceedings."

(underline supplied)

32. In **Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra [(1990) 2 SCC 715]**, a



Constitution Bench of the Apex Court found that the decision in **Forward Construction Co. v. Prabhat Mandal (Regd.), Andheri [(1986) 1 SCC 100]** clarified the position by holding that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to a writ case. The Constitution Bench accordingly held that the writ case is fit to be dismissed on the ground of res judicata. Paragraphs 35 and 47(K) of the said decision read thus;

“35. Writ Petition No.1327 of 1982 was argued by J.H. Bhatia, the petitioner, in person. He was directly recruited as Deputy Engineer Class II in July 1959 and has challenged the constitutional validity of the 1978 Rules. Mr Singhvi, the learned counsel for the respondents, took a preliminary objection to the maintainability of the writ application on the ground that his claim stands barred by principles of res judicata. Admittedly, he was represented in W.P.No.672 of



1981, filed before the Bombay High Court, which was dismissed on September 7, 1981, upholding the 1978 Rules. An application under Article 136 of the Constitution, being numbered as S.L.P. No.8064 of 1981, was filed from this judgment in representative capacity and was dismissed by this Court on December 29, 1981. These facts were not denied by the petitioner before us, and it was therefore contended on behalf of the respondents that, so far as the validity of the 1978 Rules is concerned, it must be held to be binding on the petitioner in respect of identical relief now pressed by him in the present writ case. The objection appears to be well-founded. It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the special leave petition before this Court was dismissed in limine, without giving any reason, the order cannot be relied upon for a plea of res judicata. The answer is that it is not the order of this Court dismissing the special leave petition which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment, which became final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in *Daryao v. State of U.P.* [(1962) 1 SCR 574 : AIR 1961 SC 1457] held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for



the same reliefs filed by the same parties will be barred by the general principle of res judicata. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32. An attempted change in the form of the petition or the grounds cannot be allowed to defeat the plea, as was observed at SCR p. 595 of the reported judgment, thus: (SCR p. 595)

“We are satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the present writ petition are directed against the same statute and the grounds raised by the petitioner in that behalf are substantially the same.”

The decision in *Forward Construction Co. v. Prabhat Mandal (Regd.)*, Andheri [(1986) 1 SCC 100 : 1985 Supp 3 SCR 766], further clarified the position by holding that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of



Section 11 of the Code of Civil Procedure was applied to a writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata.

xxx

xxx

xxx

47. To sum up, we hold that:

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xxx

xxx

(K) That a dispute raised by an application under Article 32 of the Constitution must be held to be barred by principles of res judicata, including the rule of constructive res judicata, if the same has been earlier decided by a competent court by a judgment which became final.” (underline supplied)

33. In **Devilal Modi v. Sales Tax Officer, Ratlam [AIR 1965 SC 1150]**, a Constitution Bench of the Apex Court held that, if the underlying rule of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time, and would be inconsistent with considerations of public policy. The relevant observations made at paragraph 8 read as under;

“8. the rule of constructive res judicata which is pleaded against him in the present appeal is, in a sense, a somewhat technical or artificial rule prescribed by the Code of Civil Procedure. This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy,



because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy” (underline supplied)

34. ‘Henderson Principle’ is a foundational doctrine in common law that addresses the issue of multiplicity in litigation. It embodies the broader concept of procedural fairness, abuse of process and judicial efficiency by mandating that all claims and issues that could and ought to have been raised in a previous litigation should not be relitigated in subsequent proceedings. The extended form of res judicata, known as constructive res judicata, contained in Section 11, Explanation VII of the Code of Civil Procedure, 1908, originates from this principle.

35. In **Henderson v. Henderson [(1843) 3 Hare 999]**, the English Court of Chancery speaking through Sir James Wigram, Vice-Chancellor, held that where a given matter becomes the subject of litigation and the adjudication of a court of competent jurisdiction, the parties so litigating are required to bring forward their whole case. Once the litigation has been adjudicated by a Court of competent jurisdiction, the same parties will not be permitted to reopen the *lis* in respect of issues which might have



been brought forward as part of the subject in contest but were not, irrespective of whether the same was due to any form of negligence, inadvertence, accident or omission. It was further held that the principle of res judicata applies not only to points upon which the Court was called upon by the parties to adjudicate and pronounce a judgment, but also to every possible or probable point or issue that properly belonged to the subject of litigation and the parties ought to have brought forward at the time. The relevant observations read as under;

“In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.”



(underline supplied)

36. The above proposition of law came to be known as the 'Henderson Principle' and underwent significant evolution, adapting to changing judicial landscapes and procedural requirements. The House of Lords in **Johnson v. Gore Wood and Co. [(2002) 2 A.C. 1]**, upon examining the 'Henderson Principle', authoritatively approved it. In **Virgin Atlantic Airways Ltd. v. Zodiac Seats UK Ltd. [(2014) A.C. 160]**, Lord Sumption JSC further expounded the 'Henderson Principle' as although separate and distinct from cause of action estoppel or res judicata yet having the same underlying public interest that there should be finality in litigation and that a party should not be twice vexed in the same matter. Even in a common law action, it was said by Blackburn, J. in **Newington v. Levy [(1870) L.R. 6 C.P. 180]** that the doctrine of res judicata applies to all matters which existed at the time of giving of the judgment and which the party had an opportunity of bringing before the Court.

37. The 'Henderson Principle' was approvingly referred to and applied by a Three-Judge Bench of the Apex Court in **State of U.P. v. Nawab Hussain [(1977) 2 SCC 806]** as the underlying principle for res judicata and constructive res judicata



for assuring finality to litigation. The Three-Judge Bench found that the same set of facts may give rise to two or more causes of action. If, in such a case, a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. The Courts have therefore treated such a course of action as an abuse of its process. Res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them. This is, therefore, another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has sometimes been referred to as constructive res judicata, which, in reality, is an aspect or amplification of the general principle. The relevant observations made by the Three-Judge Bench read thus;

“3. The principle of *estoppel per rem judicatam* is a rule of evidence. As has been stated in *Marginson v. Blackburn Borough Council* [(1939) 2 K.B. 426 at p. 437], it may be



said to be “the broader rule of evidence which prohibits the reassertion of a cause of action”. This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from the multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata.

4. But it may be that the same set of facts may give rise to two or more causes of action. If, in such a case, a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process and Somervell, L.J., has answered it as follows in *Greenhalgh v. Mallard* [(1947) All ER 255 at p. 257]: “I think that on the authorities to which I will refer it would be



accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.

This is therefore another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has sometimes been referred to as constructive res judicata, which, in reality, is an aspect or amplification of the general principle." (underline supplied)

38. In **Celir LLP v. Sumati Prasad Bafna [2024 SCC OnLine SC 3727]**, a Two-Judge Bench of the Apex Court held that the fundamental policy of the law is that there must be finality to litigation. Multiplicity of litigation benefits not the litigants whose rights have been determined, but those who seek to delay the enforcement of those rights and prevent them from reaching the rightful beneficiaries of the adjudication. The 'Henderson Principle', in the same manner as the principles underlying res judicata, is intended to ensure that grounds of attack or defence in litigation must be taken in one of the same proceedings. A party that avoids doing so does it at its own peril. In deciding as to



whether a matter might have been urged in the earlier proceedings, the court must ask itself as to whether it could have been urged. In deciding whether the matter ought to have been urged in the earlier proceedings, the court will have due regard to the ambit of the earlier proceedings and the nexus which the matter bears to the nature of the controversy. In holding that a matter ought to have been taken as a ground of attack or defence in the earlier proceedings, the court is indicating that the matter is of such a nature and character and bears such a connection with the controversy in the earlier case that the failure to raise it in that proceeding would debar the party from agitating it in the future. The doctrine itself is based on public policy flowing from the age-old legal maxim *interest reipublicae ut sit finis litium*, which means that in the interest of the State, there should be an end to litigation and no party ought to be vexed twice in a litigation for one and the same cause.

38.1. In **Celir LLP [2024 SCC OnLine SC 3727]**, the Apex Court reiterated that the 'Henderson Principle' is a core component of the broader doctrine of abuse of process, aimed at enthralling in the parties a sense of sanctity towards judicial adjudications and determinations. It ensures that litigants are not



subjected to repetitive and vexatious legal challenges. At its core, the principle stipulates that all claims and issues that could and should have been raised in an earlier proceeding are barred from being raised in subsequent litigation, except in exceptional circumstances. This rule not only supports the finality of judgments but also underscores the ideals of judicial propriety and fairness.

38.2. In **Celir LLP [2024 SCC OnLine SC 3727]**, the Apex Court noticed that there are four situations where, in second proceedings between the same parties, doctrine res judicata as a corollary of the principle of abuse of process may be invoked; (i) cause of action estoppel, where the entirety of a decided cause of action is sought to be relitigated; (ii) issue estoppel or, 'decided issue estoppel', where an issue is sought to be relitigated, which has been raised and decided as a fundamental step in arriving at the earlier judicial decision; (iii) extended or constructive res judicata, i.e., 'unraised issue estoppel', where an issue is sought to be litigated which could, and should, have been raised in a previous action but was not raised; (iv) a further extension of the aforesaid to points not raised in relation to an issue in the earlier decision, as opposed to issues not raised in relation to the decision



itself. As part of the broader rule against abuse of process, the 'Henderson Principle' is rooted in the idea of preventing the judicial process from being exploited in any manner that tends to undermine its integrity. This idea of preventing abuse of judicial process is not confined to specific procedure rules, but rather aligned to a broader purport of giving quietus to litigation and finality to judicial decisions. The essence of this rule is that litigation must be conducted in good faith, and parties should not engage in procedural tactics that fragment disputes, prolong litigation, or undermine the outcomes of such litigation. It is not a rigid rule but rather a flexible principle to prevent oppressive, unfair, or detrimental litigation.

38.3. In **Celir LLP [2024 SCC OnLine SC 3727]**, the Apex Court held that piecemeal litigation where issues are deliberately fragmented across separate proceedings to gain an unfair advantage is in itself a facet of abuse of process of law and would also fall foul of the 'Henderson Principle'. Merely because one proceeding initiated by a party differs in some aspects from another proceeding or happens to be before a different forum, will not make the subsequent proceeding distinct in nature from the former, if the underlying subject matter or the seminal issues



involved remains substantially similar to each other or connected to the earlier subject matter by a certain degree, then such proceeding would tantamount to 'relitigating' and the 'Henderson Principle' would be applicable. Parties cannot be allowed to exploit procedural loopholes and different fora to revisit the same matters they had deliberately chosen not to pursue earlier. Thus, where a party deliberately withholds certain claims or issues in one proceeding with the intention to raise them in a subsequent litigation disguised as a distinct or separate remedy or proceeding from the initial one, such subsequent litigation will also fall foul of the 'Henderson Principle'. Similarly, where a plea or issue was raised in earlier proceedings but later abandoned, it is deemed waived and cannot be relitigated in subsequent proceedings. Allowing such pleas to be resurrected in later cases would not only undermine the finality of judgments but also incentivize strategic behaviour, where parties could withdraw claims in one case with the intention of reintroducing them later. Abandonment signifies acquiescence, barring its reconsideration in subsequent litigation. This ensures that judicial processes are not misused for tactical advantage and that litigants are held accountable for their procedural choices. Parties must litigate diligently and in good



faith, presenting their entire case at the earliest opportunity.

38.4. In **Celir LLP [2024 SCC OnLine SC 3727]**, the Apex Court held that the 'Henderson Principle' operates on the broader contours of judicial propriety and fairness, ensuring that the judicial system remains an instrument of justice rather than a platform for procedural manipulation. Judicial propriety demands that courts maintain the finality and integrity of their decisions, preventing repeated challenges to settled matters. Once a matter has been adjudicated, it should not be revisited unless exceptional circumstances warrant such reconsideration. Repeated litigation of the same issue not only wastes judicial resources but also subjects the opposing party to unnecessary expense and harassment. judicial processes are not merely technical mechanisms but are rooted in principles of equity and justice.

39. In **Samir Kumar Majumder v. Union of India [2023 SCC OnLine SC 1182]**, a Two-Judge Bench of the Apex Court noticed that almost two centuries ago, in **Henderson v. Henderson [(1843) 3 Hare 100]**, the Vice-Chancellor Sir James Wigram felicitously put the principle thus;

"In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of



competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."

(underline supplied)

39.1. In **Samir Kumar Majumder [2023 SCC OnLine SC 1182]**, the Apex Court noticed that the principle, popularly known as the doctrine of constructive res judicata, based on the might and ought theory, has been recognised by the Court in several judgments. In **Maharashtra Vikrikar Karamchari Sangathan v. State of Maharashtra [(2000) 2 SCC 552]**, the Court held as under;

"22. It was then contended on behalf of the appellants that neither the Recruitment Rules of 1971 nor the Seniority Rules of 1982 provided for carrying forward the vacancies falling in either category. In the absence of such rules which specifically provide for carrying forward the vacancies falling



in either category, no such carry-forward rule could be implied either in the Recruitment Rules or in the Seniority Rules. This contention need not detain us any longer because such a contention was available to the appellants in the earlier proceedings, namely, Transfer Application No. 822 of 1991, and the same was not put in issue. That not having been done, it must follow that such a contention is barred by the principles of constructive res judicata. Neither the contesting respondents nor the appellants ever raised this contention at any stage of the proceedings in Transfer Petition No. 822 of 1991. It would, therefore, be too late to raise such a contention when the seniority list has been finalized pursuant to the judgment of Maharashtra Administrative Tribunal, Bombay Bench in Transfer Petition No. 822 of 1991.” (underline supplied)

The doctrine itself is based on public policy flowing from the age-old legal maxim *interest reipublicae ut sit finis litium*, which means that in the interest of the State, there should be an end to litigation and no party ought to be vexed twice in a litigation for one and the same cause. See: **M. Nagabhushana v. State of Karnataka [(2011) 3 SCC 408]**.

40. In the instant case, as already noticed hereinbefore, reliefs (n) to (p) sought for in W.P.(C)No.32541 of 2025 are against restricting or taking away the benefit of the notification dated 29.05.2015 from MSMEs whose credit limit exceeds Rs.25



crores. Reliefs (n) to (p) reads thus;

“(n) Declare that the circular dated 17.03.2016 restricting, nay completely taking away, the benefit of the notification dated 29.05.2015 from MSMEs whose credit limit exceeds Rs.25 crores, is illegal, ultra vires the MSMED Act/notification and void to that extent that it takes away such right;

(o) To declare that the circulars dated 17.03.2016, 26.06.2020, and 04.06.2021 are liable to be read together, and that by virtue of the circular dated 04.06.2021, the cap of Rs.25 crores imposed by the RBI stands altered and amended;

(p) Without prejudice to reliefs above, to issue a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the RBI to remove the cap of Rs.25 crores which it had imposed by circular dated 17.03.2016 or in the alternative to enhance it with retrospective effect to a minimum of Rs.50 crores, taking into account the revision of the definition of MSMEs from time to time enhancing the upper limit manifold time;”

The interim relief sought for the appellants-petitioners in W.P.(C)No.32541 of 2025, was a stay of all proceedings against the petitioners under the SARFAESI Act, RDB Act, IBC and NI Act pending disposal of the writ petition/the constitution of a committee for the resolution of stress.

41. The additional reliefs (xviii) to (xx) sought for in the previous writ petition, i.e., W.P.(C)No.46514 of 2024, based on



the order dated 17.02.2025 in I.A.No.1 of 2025, read thus;

“(xviii) To declare that the circular dated 17.03.2016 restricting, nay completely taking away, the benefit of the notification dated 29.05.2015 from MSMEs whose credit limit exceeds Rs.25 crores, is illegal, ultra vires the MSMED Act/notification and void to that extent that it takes away such right;

(xix) To declare that the circulars dated 17.03.2016, 26.06.2020, and 04.06.2021 are liable to be read together, and that by virtue of the circular dated 04.06.2021, the cap of Rs.25 crores imposed by the RBI stands altered and amended;

(xx) Without prejudice to reliefs (a) and (b) above, to issue a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the RBI to remove the cap of Rs.25 crores which it had imposed by circular dated 17.03.2016 or in the alternative to enhance it with retrospective effect to a minimum of Rs.50 crores, taking into account the revision of the definition of MSMEs from time to time enhancing the upper limit manifold time;”

42. In paragraph 9 of the decision in **M.D. Esthappan [2025 KHC OnLine 655]**, this Court has referred to the findings of the learned Single Judge in the common judgment dated 11.03.2025 in W.P.(C)Nos.45166 of 2024 and 46514 of 2024. The relevant extract of paragraph 9 of the decision read thus;

“9. The learned Single Judge noticed further that Ext.P3 guidelines in W.P.(C)No.46514 of 2024 issued by the



Reserve Bank of India provide that restructuring of loan accounts with exposure of above Rs.25 Crore will continue to be governed by the extant guidelines on Corporate Debt Restructuring (CDR)/Joint Lender's Forum (JLF) mechanism. It is not disputed that the liability in the loan accounts, which are the subject matter of W.P.(C)No.46514 of 2024, are in excess of Rs.25 crore. Therefore, the petitioners in W.P.(C)No.46514 of 2024 are not entitled to the benefit of Exts.P2 and P3." (underline supplied)

43. In paragraph 16 of the decision in **M.D. Esthappan [2025 KHC OnLine 655]**, this Court quoted paragraphs 3 and 4 of the common judgment dated 11.03.2025 in W.P.(C)Nos.45166 of 2024 and 46514 of 2024, in which the learned Single Judge has referred to the contentions advanced by the learned counsel for the petitioners in W.P.(C)Nos.45166 of 2024 and 46514 of 2024. In paragraph 17 of the said decision, this Court quoted paragraphs 5 and 6 of the judgment dated 11.03.2025 of the learned Single Judge, in which the learned Single Judge has referred to the contentions advanced by the learned Standing Counsel for the 3rd respondent Bank.

44. In paragraph 18 of the decision in **M.D. Esthappan [2025 KHC OnLine 655]**, this Court noticed that a reading of the common judgment dated 11.03.2025 in W.P.(C)Nos.45166 of 2024 and 46514 of 2024 of the learned Single Judge would show



that though various reliefs, including declaratory reliefs were sought for in the writ petitions, the arguments advanced by the learned counsel for the writ petitioners were confined to the contentions referred to in paragraphs 3 and 4 of that judgment.

The learned Single Judge considered the said contentions with reference to the rival contentions raised by the learned Standing Counsel for the 3rd respondent Bank, which were noted in paragraphs 5 and 6 of the impugned judgment, and dismissed the writ petitions, after taking note of the law laid down in the decisions referred to therein.

45. Seeking review of the common judgment dated 24.06.2025 in W.A.Nos.481 of 2025 and 484 of 2025 - **M.D. Esthappan [2025 KHC OnLine 655]** - the appellants in those writ appeals filed R.P.Nos.797 of 2025 and 799 of 2025, invoking the provisions under Order XLVII Rule 1 of the Code of Civil Procedure, 1908. The grounds raised in R.P.No.797 of 2025 are extracted hereinbefore at paragraph 21. The very same grounds were raised in R.P.No.799 of 2025.

46. By the order dated 28.07.2025, this Court dismissed R.P.Nos.797 of 2025 and 799 of 2025, holding that none of the grounds raised in the review petitions, which have been extracted



in paragraph 6 of the order dated 28.07.2025, would fall within the purview of review jurisdiction under Order XLVII Rule 1 of the Code of Civil Procedure, 1908. In the said order, this Court found that the judgment sought to be reviewed is one rendered after taking note of the rival contentions on the law laid down by the Apex Court in **Pro Knits [(2024) 10 SCC 292]** and that laid down by the Division Bench of this Court in **P.K. Krishnakumar [2024 SCC OnLine Ker 6888]**, and that there is no error apparent on the face of the record, warranting an interference in the exercise of the review jurisdiction under Order XLVII Rule 1 of the Code of Civil Procedure. SLP(C)No.17263 of 2025 filed by the appellants challenging the judgment dated 24.06.2025 in W.A.No.484 of 2025 ended in dismissal by the order dated 09.07.2025. M.A.No.1330 of 2025 filed by the appellants to restore the dismissed SLP also ended in dismissal by the order dated 28.07.2025.

47. As laid down by a Three-Judge Bench of the Apex Court in **Nawab Hussain [(1977) 2 SCC 806]**, as the underlying principle for res judicata and constructive res judicata for assuring finality to litigation. The same set of facts may give rise to two or more causes of action. If, in such a case, a person is allowed to to



choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. The Courts have therefore treated such a course of action as an abuse of its process. Res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them. This is, therefore, another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has sometimes been referred to as constructive res judicata, which, in reality, is an aspect or amplification of the general principle.

48. As reiterated by the Apex Court in **Celir LLP [2024 SCC OnLine SC 3727]**, the 'Henderson Principle' is a core component of the broader doctrine of abuse of process, aimed at enthrusing in the parties a sense of sanctity towards judicial adjudications and determinations. It ensures that litigants are not subjected to repetitive and vexatious legal challenges. At its core,



the principle stipulates that all claims and issues that could and should have been raised in an earlier proceeding are barred from being raised in subsequent litigation, except in exceptional circumstances. This rule not only supports the finality of judgments but also underscores the ideals of judicial propriety and fairness.

49. The 'Henderson Principle' operates on the broader contours of judicial propriety and fairness, ensuring that the judicial system remains an instrument of justice rather than a platform for procedural manipulation. Judicial propriety demands that courts maintain the finality and integrity of their decisions, preventing repeated challenges to settled matters. Once a matter has been adjudicated, it should not be revisited unless exceptional circumstances warrant such reconsideration. Repeated litigation of the same issue not only wastes judicial resources but also subjects the opposing party to unnecessary expense and harassment. judicial processes are not merely technical mechanisms but are rooted in principles of equity and justice.

In the above circumstances, we find no reason to interfere with the judgment dated 17.10.2025 of the learned Single Judge, whereby W.P.(C)No.32541 of 2025 stands dismissed, for the



reasons stated therein. In the result, this writ appeal fails and the same is accordingly dismissed.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE

bkn/-

After the judgment was pronounced in open Court, the learned counsel for the appellants-writ petitioners, who appeared online, sought for stay of the operation of the judgment for two weeks, to enable the appellants to approach the Apex Court.

For the reasons stated in the judgment, we find that the appellants are not entitled to such an order of stay. Therefore, the oral request made by the learned counsel for the appellants is declined.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE

bkn/-



APPENDIX OF WA 2629/2025

PETITIONER ANNEXURES

- Annexure A1** TRUE COPY OF THE JUDGMENT DATED 09/07/2025
IN SLA(C)No.17263/2025 OF THE HONOURABLE
SUPREME COURT
- Annexure A2** TRUE COPY OF THE JUDGMENT DATED 06/08/2025
IN WPC 5466/2025 OF THIS HONOURABLE COURT
- Annexure A3** TRUE COPY OF THE JUDGMENT DATED 03/06/2025
IN WP(MD) 23328 /2024 OF THE HONOURABLE
MADRAS HIGH COURT
- Annexure A4** TRUE COPY OF THE NOTES DATED 25/09/2025
TENDERED BY THE COUNSEL FOR THE PETITIONERS
IN WPC 32541/25 OF THIS HONOURABLE COURT