

VERDICTUM.IN

OP (DRT) NO. 256 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

FRIDAY, THE 24TH DAY OF OCTOBER 2025 / 2ND KARTHIKA, 1947

OP (DRT) NO. 256 OF 2025

AGAINST THE ORDER/JUDGMENT DATED 31.07.2025 IN AIR NO.1111 OF 2025
OF DEBT RECOVERY APPELLATE TRIBUNAL, CHENNAI, ARISING OUT OF THE
ORDER/JUDGMENT DATED IN SA NO.117 OF 2021 OF DEBT RECOVERY TRIBUNAL- 2,
ERNAKULAM

PETITIONERS/APPELLANTS:

- 1 GLENNY C.J.,
AGED 54 YEARS
S/O. CHEMMANNUR JOSEPH, CHEMMANNUR HOUSE, ORLARIKKARA,
ARANATTUKARA VILLAGE, THRISSUR, PIN - 680003
- 2 JAYA JOSE,
AGED 44 YEARS
W/O. GLENNY C.J., CHEMMANNUR HOUSE, ORLARIKKARA,
ARANATTUKARA VILLAGE, THRISSUR, PIN - 680003

BY ADV SHRI.PRAVEEN K. JOY

RESPONDENTS/RESPONDENTS:

- 1 AUTHORISED OFFICER,
CANARA BANK, SREEKRISHNA BUILDING, 1ST FLOOR, WEST PALACE
ROAD, THRISSUR DISTRICT, PIN - 680002
- 2 MR. C.D. ANTOS,
S/O. C.A. DEVASSY, CHITTELAPPALLY, KUNNATH HOUSE, WESTERN
BAZAR, ARANATTUKARA P.O., THRISSUR DISTRICT, PIN - 680618

BY ADVS.
SRI.S.S.ARAVIND
SHRI.TINU ABRAHAM

SRI.M.GOPIKRISHNAN NAMBIAR, SC FOR R1

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION ON
24.10.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT**“C.R”**

The petitioners approached this Court challenging Ext.P12 Order of the Debt Recovery Appellate Tribunal, Chennai, which mandated them to pay 40% of the debt due, as a pre-deposit to entertain the appeal preferred by the petitioners before the said Appellate Tribunal, which is numbered as AIR (S.A.) No.1111/2025.

2. Learned counsel for the petitioners would submit that for realization of the amount due from the petitioners, one among the properties offered as security was sold in auction for a price of Rs.3.39 crores. It was pointed out that, going by Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), discretion has been granted to the Appellate Authority to direct a pre-deposit ranging from 25% up to 50% of the debt due. In the instant case, no reason, whatsoever, has been stated in Ext.P12 as to why 40% has been fixed, is the contention raised by the learned counsel for the petitioners. Learned counsel would also point out that the



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subject matter of appeal is the auction sale made in respect of the petitioners' property for a consideration of Rs.3.39 crores, and therefore, a direction to pay an amount, more than the said sum of Rs.3.39 crores, will be onerous, besides being improper, if not illegal.

3. Learned counsel for the 1st respondent would submit that, going by the second proviso to Section 18 of the SARFAESI Act, the amount to be deposited is 50%. Discretion is afforded to the Appellate Tribunal to reduce the same to 25% for reasons to be recorded in writing. In cases, where the amount of debt has been determined by the Debt Recovery Tribunal or claimed by the secured creditors, 50% of the said amount, whichever is less, has to be paid. Therefore, there is no justification for the petitioners to insist that the pre-deposit amount to maintain the appeal should be limited to 25% of the debt due.

4. Learned counsel for the auction purchaser/2nd respondent would first submit that the Writ Petition filed under Article 227 of the Constitution is not maintainable, inasmuch as the Debt Recovery Appellate Tribunal, Chennai, is not a Tribunal



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falling within the jurisdiction of this Court. According to the said respondent, the Writ Petition ought to have been filed under Article 226 of the Constitution. Secondly, learned counsel would point out that the subject matter of the appeal has nothing to do, while fixing the amount of pre-deposit to be made for maintaining the appeal. The term employed in Section 18 is the 'debt due' and the amount to be deposited has to be considered on the basis of debt due, as defined in the SARFAESI Act; and not on the basis of the subject matter of the appeal.

5. Having heard the learned counsel appearing for the respective parties, this Court finds apparent merit in the submission made by the learned counsel for the petitioners. It is true that, going by the second proviso to Section 18, there is an interdiction that the appeal shall not be entertained, unless 50% of the debt due from the appellant, as claimed by the secured creditors, or determined by the Debt Recovery Tribunal, whichever is less, is paid. In the instant case, admittedly, there is no determination of the amount due by the Debt Recovery Tribunal. True, that there



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is an amount claimed by the secured creditors. The third proviso to Section 18 would give adequate liberty and discretion to the Appellate Tribunal to reduce the deposit amount to not less than 25% of the debt referred to in the second proviso, for which, reasons are to be recorded in writing. In the instant case, it is not in dispute that the Tribunal had chosen to exercise the discretion and reduce the pre-deposit amount to 40% of the debt due. As against the decision to exercise the discretion under the third proviso, there is no challenge at the instance of respondents 1 or 2. If that be so, the question which requires consideration is whether the determination of the pre-deposit at the rate of 40% of the debt due is supported by adequate reasons in writing, as mandated by the third proviso to Section 18. A further question surfaces as to whether the same is just and reasonable in the given facts.

6. Now, coming to the objection posed by the 2nd respondent/auction purchaser, this Court notice that misquoting the Article of the Constitution, under which relief is sought for, is no ground to refuse relief, if the



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petitioners are otherwise entitled for the same. This Court is well within its limits to treat the instant Writ Petition as one filed under Article 226, even though the petitioners have quoted Article 227. Therefore, the said objection will crumble to the ground.

7. Coming to the second aspect, it cannot be said that the subject matter of the appeal is completely and wholly irrelevant, when the pre-deposit amount to entertain the appeal is to be determined. In every case, it is not the mandate of law - irrespective of the attendant facts - that the pre-deposit amount to entertain the appeal shall be 50% of the debt due, invariably. The very purpose of granting a discretion by virtue of the third proviso, itself, would vouch the proposition that it all depends on the facts of the case, and varies from case to case. It is to ensure appreciation of facts - for the purpose of exercising discretion - that the statute mandates that reasons thereof shall be recorded in writing. Thought in that perspective, the subject matter of the appeal, in the opinion of this Court, is a relevant consideration while exercising the



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discretion in terms of the third proviso; and a direction to deposit an amount more than the subject matter of the appeal - just to maintain the appeal - will indubitably result in illegal exercise of the discretion, falling foul of the requirements of the third proviso.

8. On the propriety of mandating pre-deposit of an amount more than the subject matter of the appeal, this Court is guided by the concept of '*fundamental principles of judicial procedure*', coined by the Privy Council in ***Mask and Co.'s case (AIR 1940 PC 105)*** and recognized by the Hon'ble Supreme Court in a series of judgments, including the landmark judgment by a five judges Bench in ***Dhulabhai v. State of Madhya Pradesh (AIR 1969 SC 78)***. The concept finds judicial recognition while holding that a civil court retains jurisdiction, even if it stands excluded by the statute, where the statutory Tribunal has not acted in conformity with '*the fundamental Principles of judicial procedure*'. When the purpose of a pre-deposit at the time of filing an appeal is considered, it can only be said that such deposit cannot be more than the apparent subject matter of the appeal,



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especially when such pre-deposit is only to entertain the appeal. Any interpretation otherwise will run foul of the concept of fundamental principles of judicial procedure.

9. There is no dispute/quarrel that the appeal is filed challenging the auction sale in favour of the 2nd respondent in respect of one among the secured assets offered by the petitioners. The amount fixed in the auction is Rs.3.39 crores, over which also there is no dispute. If that be so, a direction to deposit an amount more than the said 3.39 crores, which constitutes the subject matter of the appeal cannot surpass legal scrutiny, besides being onerous. In the instant case, the petitioners have been directed to pay a sum of Rs. 4,04,29,398/-. That apart, this Court also notice that no reason, whatsoever, is stated in the impugned Ext.P12 Order for fixing the amount at 40%. Once a discretion is granted by virtue of the third proviso to Section 18, the same can be exercised only in accord with the mandate of that proviso, wherefore it is imperative and incumbent on the part of the Tribunal to state adequate reasons for fixing the pre-deposit at 40% of the debt due. The absence of the



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said fundamental requirement vitiates Ext.P12. Ext.P12 will accordingly stand modified, whereby the petitioners will stand directed to pay Rs.3.39 crores - which constitutes 33.53% of the debt due (as reckoned in Ext.P12 impugned Order) - as a pre-condition for entertaining the appeal in terms of the second and third provisos to Section 18 of the SARFAESI Act. The said amount will be paid in two instalments, of which the first instalment shall be paid within a period of two weeks; and the second, within a further period of two weeks. The entire amount as directed has to be paid within one month from the date of receipt of a copy of this judgment.

The Writ Petition will stand disposed of as above.

Sd/-

C. JAYACHANDRAN, JUDGE

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APPENDIX OF OP (DRT) 256/2025

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE AMENDED S.A. NO. 117/2021 FILED (WITHOUT ANNEXURES) FILED BEFORE THE DEBT RECOVERY TRIBUNAL-2, ERNAKULAM DATED 22.03.2021
Exhibit P2	TRUE COPY OF THE ORDER IN S.A 117/2021 DATED 8.5.2025 PASSED BY THE D.R.T-2, ERNAKULAM
Exhibit P3	TRUE COPY OF THE INTERIM ORDER DATED 13.05.2025 IN WPC NO.18071/2025
Exhibit P4	TRUE COPY OF THE INTERIM ORDER DATED 23.05.2025 IN WPC NO.18071/2025
Exhibit P5	TRUE COPY OF THE INTERIM ORDER DATED 10.06.2025 IN WPC NO.18071/2025
Exhibit P6	TRUE COPY OF THE APPEAL WITH RA DIARY NUMBER 1111/2025 WITHOUT ANNEXURES DATED 24.05.2025
Exhibit P7	TRUE COPY OF THE RECEIPT OF APPEAL WITH RA DIARY NUMBER 1111/2025 DATED 13.06.2025
Exhibit P8	TRUE COPY OF THE JUDGMENT IN WPC NO.18071/2025 DATED 17.06.2025
Exhibit P9	TRUE COPY OF THE JUDGMENT IN WA NO.1546/2025 DATED 15.07.2025
Exhibit P10	TRUE COPY OF THE JUDGMENT IN SLP(C) NO.20304/2025 DATED 01.08.2025
Exhibit P11	TRUE COPY OF THE PROCEEDINGS OF DRAT, CHENNAI DATED 29.07.2025 IN IA NO.977/2025 (WAIVER) IN AIR (SA) NO.1111/2025
Exhibit P12	TRUE COPY OF THE ORDER OF DRAT, CHENNAI DATED 31.07.2025 IN IA NO.977/2025 (WAIVER) IN AIR (SA) NO.1111/2025
Exhibit P13	TRUE COPY OF THE DISCHARGE SUMMARY ISSUED FROM DAYA GENERAL HOSPITAL AND SPECIALTY CENTRE, THRISSUR DATED 09.09.2025
Exhibit P14	TRUE COPY OF THE LETTER ISSUED BY DR.PT IQBAL, DAYA GENERAL HOSPITAL AND SPECIALTY CENTRE, THRISSUR DATED 09.09.2025
Exhibit P15	TRUE COPY OF THE LATEST MEDICAL PRESCRIPTION OF THE 1ST PETITIONER ISSUED BY DR.PT IQBAL, DAYA GENERAL HOSPITAL AND SPECIALTY CENTRE, THRISSUR DATED 15.09.2025
Exhibit P16	TRUE COPY OF THE MEDICAL LABORATORY REPORT OF THE 1ST PETITIONER DATED NIL

RESPONDENT EXHIBITS

EXHIBIT-R2 (a)	TRUE COPY OF THE SALE NOTICE DATED 23/08/2024 ISSUED BY THE 1ST RESPONDENT
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