VERDICTUM.IN

CNR : KLHC010807512026

2026:KER:86722



**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE S.MANU**

**THURSDAY, THE 12TH DAY OF NOVEMBER 2026 / 21ST KARTHIKA, 1948**

**WP(C) NO. 37362 OF 2026**

**PETITIONERS:**

1 YOUSUF SIDIQUE
AGED 73 YEARS
S/O MOIDUNNY, CHEMBATTAYIL HOUSE,
P.O.KUNNAMKULAM, THRISSUR, PIN - 680517

2 D.DURAI KANNAN
AGED 56 YEARS
S/O V.K.DURAISWAMI, VELLANGALLUR MADATHIL HOUSE,
P.O.KUNNAMKULAM, THRISSUR, PIN - 680503

3 HARIDAS.A.M
AGED 60 YEARS
S/O MANUKUTTY, ARIYARATHU HOUSE, P.O.KUNNAMKULAM,
THRISSUR, PIN - 680503

BY ADVS.
SRI.RAJIT
SMT.SRUTHI RAJIT

**RESPONDENTS:**

1 AXIS BANK LTD
REPRESENTED BY ITS SENIOR MANAGER AND
THE AUTHORIZED OFFICER, STRUCTURED ASSETS GROUP
(SAG), CHENNAI, AXIS HOUSE, 1ST FLOOR, NO.3 CLUB
HOUSE ROAD, ANNA SALAI, CHENNAI, PIN - 600002

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2 MR.C.B.RAJU
AGED 49 YEARS
S/O MR.C. DAVID BABY, PROPRIETOR,
M/S CHIRAYATH GOLD ORNAMENTS MANUFACTURING,
REGISTERED OFFICE, DOOR NO.11/352, ANCHERY P.O,
OLLUR- THRISSUR, ALSO AT, CHIRAYATH HOUSE,
CHRISTOPHER NAGAR, ANCHERY P.O, THRISSUR,
PIN - 680006

3 MR. ANTONY C.O
AGED 65 YEARS
S/O OUSEPH, CHUNGATH HOUSE, KOLAZHY P.O,
THRISSUR, PIN - 680010

4 MR. M.R SIMON
AGED 63 YEARS
S/O MR.M.K RAPPAI, MALIAKKAL KATTADY HOUSE,
MEKKATTUKALAM STREET, PALAKKUZHI, KURIACHIRA P.O,
THRISSUR, PIN - 680006

5 MRS. RAGI ANTONY
AGED 52 YEARS
D/O MR.C DAVID BABY, CHUNGATH HOUSE, KOLAZHY P.O,
THRISSUR, PIN - 680010

6 MRS. AMBILY RAJU
AGED 40 YEARS
W/O MR.C.B.RAJU, CHIRAYATH HOUSE, CHRISTOPHER
NAGAR, ANCHERY P.O, THRISSUR, PIN - 680006

7 MRS. LISSY BABY
AGED 70 YEARS
D/O MR.ANTONY CHIRAYATH HOUSE, CHRISTOPHER NAGAR,
ANCHERY P.O, THRISSUR, PIN - 680006

**OTHER PRESENT:**

ADV MADHU RADHAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.10.2026, THE COURT ON 12.11.2026 DELIVERED THE FOLLOWING:

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CNR : KLHC010807512026

2026:KER:86722



**S.MANU, J.**

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W.P.(C)No.37362 of 2026

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Dated this the 12th day of November, 2026

**JUDGMENT**

Challenge in this writ petition is against Ext.P18 order passed by the learned Chief Judicial Magistrate, Thrissur in Crl.M.P.No.3/2026 in M.C.No.45/2026. Petitioners approached the CJM Court seeking an order restraining the respondents from evicting/dispossessing them from the premises claimed to be occupied by them situated in Ward 11 of Kunnamkulam Municipality. The premises were mortgaged by respondents 2 to 7 in favour of the 1st respondent bank to secure a loan. Consequent to non-repayment of the loan amount, proceedings under the SARFAESI Act were initiated. M.C.No.45/2026 was filed by the bank under Section 14 of the SARFAESI Act. An Advocate Commissioner was appointed to take physical possession of the property. Claiming

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that lease arrangements on the strength of which petitioners are in occupation of the premises were entered into much before creation of the mortgage, petitioners contended before the learned CJM that they are not liable to be dispossessed.

2. First respondent bank resisted the application of the petitioners. It contended that the CJM had no jurisdiction to adjudicate upon rival claims pertaining to tenancy or validity of lease arrangements. Bank further contended that if the petitioners are genuinely aggrieved, their remedy is to approach the DRT under Section 17 of the SARFAESI Act.

3. Learned CJM, after analysing the contentions of both sides, rejected the Crl.M.P. holding that the reliefs sought cannot be granted and the petitioners have to avail the statutory remedy.

4. Learned counsel for the petitioner contended that the petitioners were inducted long before creation of the mortgage. He submitted that only under the provisions of Kerala Buildings (Lease

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and Rent Control) Act, 1965 they can be evicted. He further contended that the petitioners have produced documentary proof of tenancies that would clearly show that the tenancies are genuine pre-mortgaged tenancies and hence the learned CJM ought not to have directed eviction of the petitioners. The learned counsel made reference to various documents produced along with the writ petition. He also relied on a judgment of a learned Single Judge of this Court in **Shaji v. Federal Bank Ltd.** [2015 (4) KLT 30] to contend that claims pertaining to tenancies can be considered by the CJM in an application under Section 14 of the SARFAESI Act.

5. Learned counsel for the respondent bank opposed the contentions of the petitioners. He made detailed reference to the documents produced by the petitioners in support of their claims and contended that the lease periods in all the deeds relied on by the petitioners were limited and the deeds were executed long ago. He also pointed out that in some of the lease deeds, the corresponding

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petitioners are not parties. He relied on a judgment of the Hon'ble Supreme Court in **Bajarang Shyamsunder Agarwal v. Central Bank of India and Another** [(2019) 9 SCC 94] and made specific reference to the following paragraphs:-

> "23. While we agree with the principle laid out in Vishal N. Kalsaria v. Bank of India [(2016) 3 SCC 762 : (2016) 2 SCC (Civ) 452] that the tenancy rights under the Rent Act need to be respected in appropriate cases, however, we believe that the holding with respect to the restricted application of the non obstante clause under Section 35 of the SARFAESI Act, to only apply to the laws operating in the same field is too narrow and such a proposition does not follow from the ruling of this Court in Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd., [(2014) 6 SCC 1 : (2014) 3 SCC (Civ) 1] .
>
> .....
>
> 32. In any case, considering the counterfactual pleaded by the appellant tenant himself, that he was a tenant who had entered into an oral agreement, such tenancy impliedly does not carry any covenant for renewal, as provided under Section 65-A of the TP Act. Therefore, in any case, Section 13(13), SARFAESI Act bars entering into such tenancy beyond January 2012. As the notice under Section 13(2), SARFAESI Act was issued on 30-4-2011, subsequent reckoning of the tenancy is barred. Such person occupying the premises, when the tenancy has been determined, can only be treated as a "tenant in sufferance". We should

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note that such tenants do not have any legal rights and are akin to trespassers.

33. In this context, we may refer to R.V. Bhupal Prasad v. State of A.P. [(1995) 5 SCC 698 : AIR 1996 SC 140], wherein a two-Judge Bench of this Court, speaking through Ramaswamy, J., made the following pertinent observations in para 8 of the Report: (SCC p. 704)

> "8. Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it, by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser."

.....

35. The operation of the Rent Act cannot be extended to a "tenant-in-sufferance" vis-a-vis the SARFAESI Act, due to the operation of Section 13(2) read with Section 13(13) of the SARFAESI Act. A contrary interpretation would violate the intention of the legislature to provide for Section 13(13), which has a valuable role in making the SARFAESI Act a self-executory instrument for debts recovery. Moreover, such an interpretation would also violate the mandate of Section 35, SARFAESI Act which is couched in broad terms."

6. He argued that the period of tenancy in the case of each one of the petitioners was long over and they can only be treated as

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tenants in sufferance even if the contention that they are in occupation of the premises is assumed as correct. He submitted that, in view of the law laid down by the Supreme Court in the judgment referred to above, contention that the petitioners can be evicted only under the Rent Control Act cannot be accepted, as the operation of the said Act cannot be extended to a tenant in sufferance.

7. I have appreciated the contentions of both sides. I have also perused the pleadings and documents.

8. The learned CJM rejected the Crl.M.P. holding that the petitioners could not demonstrate any authority vested in the court under the SARFAESI Act to recall, stay or modify orders passed under Section 14 of the Act on the basis of a disputed claim of tenancy. Further the learned CJM observed that the proceedings under Section 14 cannot be utilized to adjudicate such disputed rights. It was also found that the statutory remedy under the Act cannot be

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bypassed.

9. Interference by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India will be justified against the impugned order only if there is any illegality or impropriety in the order passed or procedure adopted. Perusal of the impugned order shows that the learned CJM has considered the contention advanced by the petitioners as also the rival contention of the bank and has passed an order giving reasons for rejecting the application of the petitioners.

10. The claim of the petitioners is on the basis of tenancies. Bank vehemently disputes the contentions of the petitioners. I prima facie find merit in the contention of the learned counsel for the respondent bank that the materials brought on record would not convincingly show that valid tenancies are subsisting. It is also to be noted that the proceedings under Section 14 of the SARFAESI Act is not purely judicial proceedings. Scope of inquiry by the Chief

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Judicial Magistrate in a proceeding under Section 14 is constricted. Therefore, I do not find any impropriety in the view of the learned CJM that adjudication of tenancy rights is beyond the scope of the proceedings under Section 14 of the Act.

11. Further the learned CJM rightly observed that the expression "any person" employed in Section 17(1) of the SARFAESI Act is wide enough to include persons other than the borrowers also if they are aggrieved by the measures taken under the SARFAESI Act. Learned CJM hence held that the petitioners have to avail the remedy available under Section 17 of the Act. I affirm the view of the learned CJM as it is perfectly correct. Proper remedy of the petitioners is to approach the Debts Recovery Tribunal. Learned CJM has left it open to the petitioners to approach the DRT or any other appropriate forum.

12. Upshot of the above discussion is that there is no merit in the challenge raised in this writ petition. Hence it is dismissed,

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however, without prejudice to the right of the petitioners to pursue statutory remedies. It is made clear that observations made by this Court in this judgment shall not be construed as conclusive opinions about the merits of the dispute.

The writ petition is disposed of as above.

Sd/-

**S.MANU**
**JUDGE**

skj

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**APPENDIX OF WP(C) NO. 37362 OF 2026**

**PETITIONERS' EXHIBITS**

| | |
|---|---|
| **Exhibit P1** | **A TRUE COPY OF THE RENTAL AGREEMENT EXECUTED BY THE 1ST PETITIONER AND ANOTHER PARTNERS IN FAVOUR OF THE LANDLORD RAJU S/O RAMASWAMI IYYAR** |
| **Exhibit P2** | **A TRUE COPY OF THE LICENSE DATED 13.12.2022 EVIDENCING THE RUNNING OF THE HOTEL ISSUED BY THE KUNNAMKULAM MUNICIPALITY** |
| **Exhibit P3** | **A TRUE COPY OF THE PROPERTY TAX REMITTED BY THE PETITIONERS IN FAVOUR OF THE LANDLORD DATED 25.07.2026 ISSUED BY THE KUNNAMKULAM MUNICIPALITY** |
| **Exhibit P4** | **A TRUE COPY OF THE DOCUMENT BEARING NO. 448/1978 OF SRO KUNNAMKULAM DATED 21.03.78** |
| **Exhibit P5** | **A TRUE COPY OF THE LICENSE EVIDENCING THE RUNNING OF THE SHOP FOR SALE OF MILK AND DAIRY PRODUCTS DATED 07.07.2022 KUNNAMKULAM MUNICIPALITY** |
| **Exhibit P6** | **A TRUE COPY OF THE PROPERTY TAX REMITTED BY THE 2ND PETITIONER IN FAVOUR OF THE LANDLORD DATED 21.03.2026 KUNNAMKULAM MUNICIPALITY** |
| **Exhibit P7** | **A TRUE COPY OF THE DOCUMENT DATED 18.01.1985** |
| **Exhibit P8** | **A TRUE COPY OF THE PROPERTY TAX REMITTED BY THE PETITIONERS IN FAVOUR OF THE LANDLORD DATED 25.09.2026 KUNNAMKULAM MUNICIPALITY** |
| **Exhibit P9** | **A TRUE COPY OF THE RENTAL AGREEMENT DATED 01.04.1993 EXECUTED BY THE FATHER OF THE 3RD PETITIONER IN FAVOUR OF THE LANDLORD RAJU S/O RAMASWAMI IYYAR** |
| **Exhibit P10** | **A TRUE COPY OF THE LICENSE NO. BFIF02-M080600-00194-2026 KUNNAMKULAM MUNICIPALITY EVIDENCING THE RUNNING OF THE STATIONARY AND COOL DRINKS SHOP** |
| **Exhibit P11** | **A TRUE COPY OF THE PROPERTY TAX NO. R-M080600-26012788 REMITTED BY THE 3RD PETITIONER IN FAVOUR OF THE LANDLORD DATED** |

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|---|---|
| | **25.09.2026** |
| **Exhibit P12** | **A TRUE COPY OF THE ORDER OF THE RENT CONTROL APPELLATE AUTHORITY DATED 30.03.2023 IN R.C.A.NO.141/2016 AND CONNECTED CASES** |
| **Exhibit P13** | **TRUE COPY OF THE RENT RECEIPTS RETAINED BY THE TENANTS BEFORE THE RENT CONTROL COURT, CHAVAKKAD** |
| **Exhibit P14** | **A TRUE COPY OF THE APPLICATION IN MC NO. 45/2026 BEFORE THE CJM THRISSUR DATED 10.02.2026** |
| **Exhibit P15** | **A TRUE COPY OF THE ABOVE ORDER DATED 30.03.2026 IN MC NO. 45/2026 OF THE CJM, THRISSUR** |
| **Exhibit P16** | **A TRUE COPY OF THE PETITION IN MC 45/2026 IN MP 3/2026 FILED BY THE PETITIONER BEFORE THE LEARNED CJM THRISSUR** |
| **Exhibit P17** | **A TRUE COPY OF THE ABOVE OBJECTION IN MP 3/2026 IN MC 45/2026 FILED BY THE 1ST RESPONDENT BEFORE THE JUDICIAL MAGISTRATE COURT, THRISSUR EVIDENCING THE SAID FACT** |
| **Exhibit P18** | **A TRUE COPY OF THE ORDER DATED 07.10.2026 IN CRL.MP NO. 3/2026 IN MC NO. 45/2026 OF THE LEARNED CJM THRISSUR** |
| **Exhibit P19** | **A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN SHAJI VS. FEDERAL BANK** |