ITEM NO.14 COURT NO.3 SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 1091/2026

K. K. PRAVEEN Petitioner(s)

VERSUS

J.M. FINANCIAL ASSET RECONSTRUCTION COMPANY P. LTD & ORS. Respondent(s)

FOR ADMISSION

Date : 09-09-2026 This petition was called on for hearing today.

CORAM :
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) :Mr. Mathews J Nedumpara, Adv.
Ms. Maria Nedumpara, Adv.
Ms. Hemali Suresh Kurne, Adv.
Mr. Shameem Fayiz, Adv.
Mr. Samuel Dara, Adv.
Mr. Jeevan R. Patil, Adv.
Mr. Rakesh Kumar, Adv.
Dr. Linto K.B., AOR

For Respondent(s) :

UPON hearing the counsel the Court made the following

O R D E R

We have heard Shri Mathews J Nedumpara, learned counsel for the petitioner at length.

The prayers sought for by the petitioner in this writ petition filed under Article 32 of the Constitution of India read as under -

"a) Issue a writ in the nature of Mandamus or any other appropriate Writ, Order or Direction to declare that the cause of action, which is a disputed evidence, underwent the process known as "transit in rem judicatam"during the trial of O.A. No. 439 of 2014

before the DRT, Ernakulam and that upon the passing of the judgment and decree by the DRT, it merged with the decree of the DRT, Ernakulam and thereafter ceased to exist as an independent cause of action and that the decree is final, binding and authoritative unless set aside or modified in review, appeal or by any other means known to law and that since the cause of action has merged with the decree passed in O.A. No. 439 of 2014, no fresh proceedings for enforcement of the very same cause of action can lie under the SARFAESI Act or under any other law, the same being barred by the doctrine of res judicata and further that Respondent Bank/ARC can enforce its rights only by executing the decree In accordance with law and by no other means; and

b) Issue a writ in the nature of Mandamus or any other appropriate Writ, Order or Direction to declare that the expression 'banking' means the acceptance of deposits and the lending of money, and that the said expression has been used in that well-established sense in Entry 45 of List I (Union List) of the Seventh Schedule to the Constitution of India; and further to declare that any activity which does not involve the acceptance of deposits and the lending of money does not fall within the ambit of the expression "banking" occurring in Entry 45 of List I of the Seventh Schedule to the Constitution, and therefore the Asset Reconstruction Companies (ARCs), which are admittedly neither authorized to accept deposits nor to lend money as banks are permitted, are not banking companies; and, as an inevitable consequence thereof, the Recovery of Debts and Bankruptcy Act, 1993, and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), enacted by Parliament in exercise of its legislative power under Entry 45 of List I, cannot be made applicable to ARCs; and to declare that the proceedings initiated by the respondent Asset Reconstruction Company under the RDB Act and SARFAESI Act, including the measures taken under Section 13(4) and the order passed by the jurisdictional Magistrate under Section 14 of the SARFAESI Act, are unconstitutional, without jurisdiction, null and void; and

c) Issue a writ in the nature of Mandamus or any other appropriate Writ, Order or Direction to the Federal

Bank Ltd. and JM Financial Asset Reconstruction Company to state on oath whether they had constituted any committee in terms of Paragraph 2 of the notification dated 29.05.2015 consisting of persons as contemplated in Paragraph 3 thereof, which is nothing but a judicial tribunal without the trappings of a court, empowered and duty bound to embark upon an inquiry/process of resolution of stress/adjudication akin to the BIFR, since abolished, and further if no committee has ever been constituted from 29.05.2015,namely, the date on which the notification under Section 9 of the MSMED Act for resolution of stress came into force, till 28.7.2025 namely when the judgment in Shri Shri Swami Samarth was rendered holding that if an MSME borrower in response to a notice under Section 13(2) bring to the notice of the bank that it is an MSME, then the Bank shall not proceed with the recovery actions and shall instead embark upon a resolution of stress as contemplated in the notification; and

d) Issue a writ in the nature of Mandamus or any other appropriate Writ, Order or Direction to the Respondent Banks/NBECs are estopped from initiating multiple action under the SAREAESl Act, and RDBE Act/IBC 2016, in respect of the very same cause of action between the very same parties, namely, the instant Plaintiffs and the them, that the invocation of one forum will constitute a bar/ estoppel for initiating any other action or approaching any other forum, ne bis in idem being an undeniable fundamental principle of law having universal application and that the Defendants are duty bound to elect one forum which will constitute a bar in invoking any other forum or in the alternative to declare that Declare that Sections 13(2), 13(4) and 14 of the SAREAESl Act, 2002 and Section 19 of the Recovery of Debts and Bankruptcy Act, insofar as they permit simultaneous proceedings against a borrower contrary to the first proviso to Section 19 and Section 13(10) of the SARFAESl Act, are unconstitutional and void; and

e) Issue a writ in the nature of Mandamus or any other appropriate Writ, Order or Direction to declare that the entire proceedings initiated by the Respondent against the Petitioners under Sections 13(2), 13(4) and 14 of the SARFAESl Act, are unconstitutional, illegal and void, being in violation of Paragraph 5(4)

(iii) of the notification dated 29.5.2015 under the MSMED Act and without jurisdiction for more than one reason; and

f) Issue a writ in the nature of Mandamus or any other appropriate Writ, Order or Direction calling for the entire records and proceedings leading to the classification of the Petitioners' account as a Non-Performing Asset (NPA), the issuance of notices under Sections 13(2) and 13(4), and the order passed under Section 14 of the SARFAESl Act, 2002 and also the proceeding under section 19 of the RDB Act and to quash and set aside the same being unconstitutional, illegal and void; and

g) Issue a writ in the nature of Mandamus or any other appropriate Writ, Order or grant an ad-interim injunction restraining and prohibiting the Respondent Bank, its agents, servants, and privies from proceeding any further in pursuance of the actions initiated under the SARFAESl Act, the RDB Act, or any other law in force;

h) Pass any other orders which the Hon'ble Court deems fit owing to the nature of circumstances."

Learned counsel Shri Nedumpara pointed out that when once there is a decree passed (ex-parte decree in the instant case), namely O.A. No.439/2014 by the DRT, Ernakulam, the principle of *transit in rem judicatam* applies. Further, the general principle of *res judicata* applies and therefore, there cannot be any further proceeding which can be taken as the cause of action would have merged in the decree. He therefore, contended that the provision of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) could not have been applied in the facts and circumstances of this case.

We have considered the said arguments advanced by Shri Nedumpara.

We only refer to Section 35 of the SARFAESI Act, 2002, which reads as under -

> "35. The provisions of this Act to override other laws.- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

Having regard to the fact that the provisions of the SARFAESI Act, 2002 have an overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any other law, we find that the provisions of the said Act would override. Therefore, the contentions of learned counsel Shri Nedumpara cannot be accepted.

Hence, the Writ Petition is dismissed.

Pending application(s) shall stand disposed of.

(NEETU SACHDEVA)
DEPUTY REGISTRAR

(DIVYA BABBAR)
COURT MASTER (NSH)