2026:KER:7098

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

SATURDAY, THE 31ST DAY OF JANUARY 2026 / 11TH MAGHA, 1947

WA NO. 105 OF 2009

AGAINST THE JUDGMENT DATED 26.10.2008 IN W.P.(C) NO.29621 OF 2006 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER IN W.P.(C):

SOPHIE VINAY
DOOR.NO.EL/CC 56/874, SION NAGAR,
KONTHURUTHY,, KOCHI - 682 015.

BY ADVS.
SMT.LAYA MARY JOSEPH
SHRI.SHYAM PADMAN (SR.)
SHRI.C.M.ANDREWS
SMT.BOBY M.SEKHAR
SHRI.HARISH ABRAHAM
SMT.NICHU WILLINGTON
SMT.ASHWATHI SHYAM
SHRI.H.RAMANAN

RESPONDENTS/RESPONDENTS IN W.P.(C):

1 **CANARA BANK**
KARUNA BUILDINGS, M.G.ROAD,
ERNAKULAM, REP. BY THE CHIEF MANAGER.

2 **THE AUTHORISED OFFICER**
CANARA BANK, OVERSEAS BRANCH,
KARUNA BUILDINGS, M.G.ROAD,
ERNAKULAM

3 **SAVIO**

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S/o.JIMMY ANTONY
CHOOLACKAL HOUSE,
FATHIMA CHURCH ROAD,
ELAMKULAM, KOCHI-20.

4 P.T.MATHAI CONSTRUCTION COMPANY PVT.LTD
K.V. 29, PANAMPALLY NAGAR,
KOCHI - 682 036, REP. BY ITS DIRECTOR,
ROJER P. MATHAI.

BY ADVS.
SC, CANARA BANK
SRI.JOPHY POTHEN KANDANKARY
SHRI.SANTHEEP ANKARATH
SHRI.AJEESH S.BRITE
SHRI.FRANCIS ASSISI
SMT.DARSANA
SMT.SREELAKSHMI RAMACHANDRAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 14.01.2026, THE COURT ON 31.01.2026 DELIVERED THE FOLLOWING:

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JUDGMENT

Muralee Krishna S., J.

The petitioner in W.P.(C)No.29621 of 2006 has filed this writ appeal under Section 5(i) of the Kerala High Court Act, 1958, challenging the judgment dated 16.10.2008 passed by the learned Single Judge in that writ petition.

2. The appellant-writ petitioner is the daughter of Smt. Stella Joseph, one of the guarantors, who had mortgaged her property to secure the loan facility granted by the 1st respondent bank to one M/s. Surya Sea Products. When the loan availed by M/s. Surya Sea Products became a Non-Performing Asset ('NPA' for short), and the bank proceeded against the property of the guarantor, Smt. Stella Joseph under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI' Act for short). Ext.P1 produced in the writ petition is a copy of the notice dated 21.02.2006 issued by the authorised officer of the bank under Section 13(2) of the SARFAESI Act. According to the appellant, her mother, Smt. Stella Joseph, who mortgaged the property in her capacity as the guarantor to the loan, died on

13.09.2006, and hence the appellant became a co-owner of the property. During her lifetime, the mother of the appellant made Ext.P5 representation dated 20.07.2006 to the 1st respondent bank, pointing out that she had instructed the partners of M/s. Surya Sea Products to give a better offer to the bank for settlement of the matter. Meanwhile, the banking division of the Union Ministry of Finance had promulgated the One Time Settlement ('OTS' for short) for the sick units in the seafood industries, offering a package of OTS to the companies engaged in the seafood business. The State Bank of India issued Ext.P4 OTS Scheme under Ext.P3 Circular dated 03.07.2006 issued by the Government of India, Ministry of Finance, Department of Economic Affairs, Banking Division. The principal borrower M/s. Surya Sea Products had also issued Ext.P2 reply dated 19.04.2006 to the 1st respondent bank expressing their wish to have a settlement of the debt due to the bank.

2.1. The appellant states that the 1st respondent had issued Ext.P6 notice dated 27.05.2006 invoking Rule 6(2) of the Security Interest (Enforcement) Rules, 2002, which, according to the appellant is a wrong provision which pertains to movable

properties and the actual provision ought to have been incorporated by the bank is Rule 8(6) of the said Rules. Thereafter, the principal debtor M/s. Surya Sea Products had submitted Ext.P8 representation dated 18.09.2006 to the 1st respondent bank requesting an OTS.

2.2. The appellant further states that she received a message from an Advocate intimating that the 1st respondent bank has moved Debts Recovery Tribunal, Ernakulam, for releasing the title deed pertaining to the extent of 77 cents of land comprised in Survey No.982/1A of Thiruvaniyur Village, and he handed over a copy of the petition received in the matter to the appellant. On enquiry, the appellant came to know that the 1st respondent had proposed to sell the property on 21.08.2006 and thereafter, for want of bidders, the sale was adjourned. On receiving the copy of the petition for release of the title deed, the appellant filed Ext.P10 objection dated 19.10.2006 before the Debts Recovery Tribunal (the 'Tribunal' for short), opposing the release of the title deed to the 3rd respondent, who is the purchaser of the property in the auction conducted by the bank. Thereafter, alleging non-compliance with the statutory provisions and illegality in the

conduct of sale, the appellant filed W.P.(C)No.29621 of 2006, under Article 226 of the Constitution of India, seeking the following reliefs;

> "a) Call for the records leading to the issue of Ext.P6, and quash and all proceedings pursuant thereto, by the issue of a writ of certiorari or such other writ or direction.
>
> b) Declare that the sale of the property standing in the name of the late Stella Joseph, comprised in Survey No.982/1A (Re-Sy 55/1, Block No.40) of Thiruvaniyoor Village on 19.09.2006 and the confirmation and the execution of the sale certificate in favour of the 3rd respondent on 29.09.2006 are illegal and void.
>
> c) Issue a writ of mandamus or such other writ order or direction compelling the 1st respondent to consider the Ext.P8 and other representations of the principal debtor for One Time Settlement."

3. Initially, respondents 1 and 2 filed a counter affidavit dated 14.06.2007 in the writ petition, opposing the reliefs sought for and producing therewith Exts.R1(a) to R1(e) documents. Thereafter, the appellant as well as the respondents filed various reply affidavits and additional counter-affidavits before the learned Single Judge. The appellant have produced Exts.P11 to P23 additional documents, and the respondents have produced Exts.R1(f) to R1(n) and Exts.R4(A) to R4(J) documents.

4. After hearing both sides and on appreciation of the materials on record, by a detailed judgment dated 16.10.2008, the learned Single Judge dismissed the writ petition, however, making it clear that the judgment will not stand in the way of the appellant from approaching the Civil Court for seeking appropriate reliefs in the matter. Being aggrieved, the appellant has filed the present writ appeal.

5. On 14.01.2009, when the writ appeal came up for admission, the Division Bench headed by the Hon'ble the Acting Chief Justice, without expressing any opinion regarding the merits of the matter, disposed of the writ appeal, holding that an appeal will lie against the impugned action of the bank under Section 17 of the SARFAESI Act before the Tribunal. Therefore, the appellant is permitted to file an appeal within three weeks from the date of that judgment before the Tribunal. If the appeal is filed within three weeks, the Tribunal was directed to dispose of the matter on merits after hearing the concerned parties. The division bench directed to maintain the Status quo for a period of another two months, during which time the appellant should get appropriate relief from the Tribunal.

6. Against the disposal of the writ appeal, the 4th respondent herein, P. T. Mathai Construction Company Pvt. Ltd., filed R.P.No.1173 of 2009. By the order dated 27.09.2010, a Division Bench of this court allowed the said review petition and recalled the judgment dated 14.01.2009, holding that the directions issued by the Division Bench on 14.01.2009 were essentially on the premise that the writ petition was filed since there was absence of presiding officer in the Tribunal, which is factually incorrect. Consequently, the writ appeal was directed to be listed for admission at the earliest.

7. On 14.10.2010, the writ appeal was again admitted on file. The learned counsel took notice for respondents 1 to 4. On 14.10.2010, this Court directed the parties to maintain the status quo.

8. Again, the 4th respondent, M/s. P. T. Mathai Construction Company Pvt. Ltd., filed R.P.No.1076 of 2010 to review the order dated 27.09.2010 passed by this Court in R.P.No.1173 of 2009. By the order dated 30.11.2010, the said review petition was dismissed by this Court, leaving open the arguments advanced by the learned Senior Counsel for the

appellant that an application for review of an order passed on a review petition is not maintainable, since a decision on that issue is not necessary to dispose of the matter. However, on merits, this Court found that the second review petition, i.e., R.P.No.1076 of 2010, is liable to be dismissed.

9. On 07.07.2017, when the writ appeal came up for consideration, on the application of the appellant, the matter was adjourned to a longer date. Thereafter, for various reasons, the appeal was adjourned from time to time.

10. Heard the learned counsel for the appellant, the learned counsel for respondents 1 and 2 and also the learned counsel for the 4th respondent.

11. The learned counsel for the appellant vehemently argued that the sale of the property mortgaged by the predecessor of the appellant, who is one of the guarantors to the loan availed by M/s. Surya Sea Products is vitiated for non compliance of the statutory mandates of conducting the sale. The learned counsel reiterated the contentions which the appellant had taken before the learned Single Judge, which are stated in paragraph 4 of the impugned judgment. Those contentions are extracted hereunder

for clarity;

> **"4. Contentions of the petitioner**:
>
> (1) Ext. P3 would evidence a decision which would show that a reasonable one time settlement proposal could be made till September, 2006. Therefore, the sale which was held on 19.09.2006 without even waiting for the period mentioned in Ext. P3 to be over was arbitrary and illegal.
>
> (2) The borrower had passed away on 13.09.2006. The sale on 19.09.2006, which was without notice to the legal heirs, is invalid in law.
>
> (3) The borrower and the guarantor are entitled to notice under Rule 8(6) of the Rules. The failure to comply with the same vitiates the sale.
>
> (4) The property was knocked down for a very low price of Rs.21.60 lakhs. The upset price fixed was Rs.21.50 lakhs. However, the property is sold by the third respondent to the fourth respondent for a price of more than Rs.35 Lakhs going by ExtP18. The sale in favour of the fourth respondent was within a period of less than ten days from the date of purchase. The property would have easily fetched a sum of Rs.77 Lakhs at the rate of Rs. One lakh per cent.
>
> (5) The sale of the property was originally scheduled to be held on 21.08.2006. The sale came to be adjourned to 19.09.2006. There was no notice given by the authorised officer. Thus a secret sale was held depriving the mortgagor of the chance to participate and salvage the property from other bidders. The sale infact was adjourned not by the authorised officer, it is submitted. Notice of the adjourned sale has to be given under Rule 8(6), it is contended.
>
> (6) Rule 8(1) of the Rules has been violated as no notice was given of the taking of possession of the property.

(7) Rule 8(2) of the Rules is also violated in so far as instead of publishing the taking of possession in two leading newspapers, one of which was to be in vernacular language having sufficient circulation in the locality, the publication has been made only in a Malayalam daily, which was also not a leading daily.

(8) Ext.P6 notice is purported to be issued under Section 13(4) read with Rule 6(2) of the Rules. It is pointed out that Rule 6(2) relates to movables and it is not a notice as contemplated in law.

(9) There was no reply to Ext. P2 representation as required in law.

(10) No proper notice was issued under Rule 8(6) and it led to deprivation of valuable right under Section 13(8) of the Securitisation Act.

(11) Exts.R1(c) and RI(d) auction notices dated 21.07.2006 published in the two dailies differ in its terms and conditions. It is stated under important terms and conditions in English in the New Indian Express, that the intending bidder should submit his or her offer along with earnest money of 10% of the reserve price. But the Mathrubhumi notification does not mention about the intending bidder submitting offer. The important terms are violated in regard to submission of EMD. There were no written offers as per notice.

(12) Petitioner would contend that the auction purchaser was barely 18 years at the time of sale."

Apart from the above submissions, the learned counsel for the appellant submitted that, considering the long pendency of the matter before this Court, the parties may not be relegated to the Tribunal once again.

12. On the other hand, the learned counsel for respondents

1 and 2 would submit that, subsequent to the sale, a settlement was arrived at between the principal borrower and the bank for a sum of around Rs.43,00,000/-. Deducting the sale consideration, a sum of Rs.8,00,000/- was paid by the principal borrower in view of the said settlement. Moreover, after the judgment dated 14.01.2009 passed by this Court in the writ appeal, which was later recalled as per the order in the review petition, the appellant has filed S.A.No.48 of 2009 before the Tribunal, and the same is pending consideration. Similarly, the bank has filed O.A.No.148 of 2004 before the Tribunal, and the same is still pending before the Tribunal. Another guarantor of M/s. Surya Sea Products filed S.A.No.78 of 2006 before the Tribunal, and the same is also pending consideration. The learned counsel vehemently argued that since an efficacious alternative remedy is available for the appellant before the Tribunal, the writ petition is not maintainable and therefore, the writ appeal is liable to be dismissed. The learned counsel for respondents 1 and 2 further addressed arguments supporting the stand taken by them before the learned Single Judge, contending that the sale was held following all procedural formalities.

13. The learned counsel for the 4th respondent submitted that he is the purchaser of the property from the original auction purchaser, i.e., the 3rd respondent. The sale of the property by the 3rd respondent in favour of the 4th respondent is not under challenge in the writ petition, and if the sale is set aside, that will cause irreparable hardships to the 4th respondent. The appellant, who is one of the legal heirs of one of the guarantors of the loan availed by M/s. Surya Sea Products is challenging the sale of mortgaged property, offered by the predecessor of the appellant as security for the loan. There is no dispute on the point that the appellant has a remedy under the provisions of the SARFAESI Act before the Tribunal against the steps for recovery initiated by the bank.

14. In **United Bank of India v. Satyawati Tondon [(2010) 8 SCC 110]**, a Two - Judge Bench of the Apex Court held that if the 1st respondent guarantor had any tangible grievance against the notice issued under Section 13(4) of the SARFAESI Act or the action taken under Section14, then he could have availed remedy by filing an application under Section 17(1) before the

Debts Recovery Tribunal. The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Section 17 and Section 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

15. In **Satyawati Tondon [(2010) 8 SCC 110]**, on the facts of the case at hand, the Apex Court noted that the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Art.226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. While dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such

dues are a code unto themselves, inasmuch as, they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi - judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing the remedy under Art.226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

16. In **Kuruvithadam Agencies (Pvt.) Ltd. and another v. Authorised Officer, Standard Chartered Bank (2021 KER 20923)** - judgment dated 28/05/2021 in W.A.No.1584 of 2020, the grievance of the appellants was that the Bank had not followed the guidelines and directives issued by the Reserve Bank of India in the matter of treating the account as Non - Performing Asset. The Division Bench noticed that a reading of S.13 of the SARFAESI Act makes it categorically clear that Parliament has provided a scheme thereunder, enabling an aggrieved person to ventilate his grievances by resorting to the procedure prescribed thereunder. The grievance of the appellants was that the respondent Bank is not entitled to proceed against them, since the conduct on the part of the Bank in converting the

account of the appellants into a Non - Performing Asset is not in accordance with the Reserve Bank of India guidelines. The Division Bench held that it was a subject matter that ought to have been pointed out by the appellants before the Bank itself, since the statute prescribes a modality enabling a party to make a suitable representation. Therefore, the proceedings initiated by the Bank squarely come under the procedure contemplated under S.13 of the SARFAESI Act, and the appellants have a clear remedy as is statutorily prescribed under the said Act. The question as regards the action initiated by the Bank illegally can be raised by the appellants before the Debt Recovery Tribunal, at the appropriate time, as is prescribed under law, and the Tribunal is vested with ample powers to consider such aspects, regarding the loan account maintained by an aggrieved person with a Bank, the conduct on the part of the Bank in making the account a Non - Performing Asset and the failure on the part of the Bank to follow the Reserve Bank guidelines. That apart, there is a clear remedy of appeal provided under the SARFAESI Act, if aggrieved, on any order passed by the Debt Recovery Tribunal, which thus means, the statute has provided a clear mechanism to tackle all and any

situations of an aggrieved person under law, and therefore, a writ court would be slow in interfering with the action initiated by the Bank, especially because the SARFAESI Act was introduced with the avowed object of speedy recovery of amounts, without unnecessary interference of courts.

17. In **Authorized Officer, State Bank of Travancore and Another v. Mathew K.C. [2018 (1) KHC 786]**, the Apex Court held that the High Court under Article 226 of the Constitution of India can entertain a writ petition only under exceptional circumstances and that it is a self imposed restraint by the High Court. The four exceptional circumstances such as, where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, were re iterated in paragraph 6 of the said judgment by relying on the judgment of the Apex Court in **Commissioner of Income Tax and Others v. Chhabil Dass Agarwal [(2014) 1 SCC**

603].

18. This position was reiterated by the Apex Court in **South Indian Bank Ltd. (M/s.) v. Naveen Mathew Philip [2023 (4) KLT 29]** and after discussing the various judgments on the point as well as the circumstances in which the High Court can interfere with in matters pertaining to the SARFAESI Act, held as under:

> "Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Art.226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi - judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Art.226 of the Constitution, a person must exhaust the remedies available under the relevant statute".

19. In **PHR Invent Educational Society v. UCO Bank [2024 (3) KHC SN 3]** the Apex Court held that it is more than a settled legal position of law that in matters arising out of RDB Act

and SARFAESI Act, the High Court should not entertain a petition under Art.226 of the Constitution particularly when an alternative statutory remedy is available.

20. A learned Single Judge of this Court in **Jasmin K. v. State Bank of India [2024 (3) KHC 266]** reiterated the position of law laid down by the Apex Court in the aforementioned judgments.

21. In the light of the judgments referred to supra, regarding the entitlement of the appellant to challenge the proceedings initiated by the bank, we find no exceptional circumstances as held in to hold that the present writ petition filed under Article 226 of the Constitution of India, is maintainable. As far as the contention of the appellant regarding the long pendency of the matter before this Court is concerned, as noticed herein above, immediately after the judgment dated 14.01.2009 passed by this Court in this writ appeal, the appellant filed S.A.No.48 of 2009 before the Tribunal, and the same is pending. In such circumstances, the period of pendency of the matter before this Court cannot be taken as a ground to hold that the appellant need not be relegated to avail the alternative remedy.

22. At this juncture, the learned counsel for the 4th respondent submitted that if the remedy of the appellant before the Tribunal is barred by limitation, while granting liberty to the appellant to prosecute the matter before the Tribunal, this court may not exempt the period of limitation, since such a liberal exercise of jurisdiction under Article 226 of the Constitution of India is not contemplated under any of the provisions. In support of his arguments, the learned counsel relied on the judgment in **Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited [(2020) 19 SCC 681]**, wherein the Apex Court considered the question whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India ought to entertain a challenge to the assessment order on the sole ground that the statutory remedy of appeal against that order stand foreclosed by the law of limitation. Paragraphs 11, 12 and 15 of that judgment read thus;

> "11. In the backdrop of these facts, the central question is whether the High Court ought to have entertained the writ petition filed by the respondent? As regards the power of the High Court to issue directions, orders or writs in exercise of its jurisdiction under Article 226 of the Constitution of India, the same is no more res integra. Even though the

High Court can entertain a writ petition against any order or direction passed / action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law (see Baburam Prakash Chandra Maheshwari vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, AIR 1969 SC 556 and also Nivedita Sharma vs. Cellular Operators Association of India & Ors., 2011 (14) SCC 337). In Thansingh Nathmal & Ors. vs. Superintendent of Taxes, Dhubri & Ors, AIR 1964 SC 1419, the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self-imposed restraint and not entertain the writ petition, if an alternative effective remedy is available to the aggrieved person. In paragraph 7, the Court observed thus: -

> 7. Against the order of the Commissioner, an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Article 226 and sought to reopen the decision of the Taxing Authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the

territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up." (emphasis supplied)

We may usefully refer to the exposition of this Court in Titaghur Paper Mills Co. Ltd. & Anr. Vs. State of Orissa & Ors., [(1983) 2 SCC 433], wherein it is observed that where a right or liability is created by a statute, which gives a

special remedy for enforcing it, the remedy provided by that statute must only be availed of. In paragraph 11, the Court observed thus:-

> "11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford, (1859) 6 CBNS 336, 356 in the following passage:
>
> There are three classes of cases in which a liability may be established founded upon statute ….. But there is a third class, vix. Where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute

must be adopted and adhered to.

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd., 1919 AC 368 and has been reaffirmed by the Privy Council in Attorney-General of Trinidad and Tobago v. Gordon Grant & Co. Ltd., 1935 AC 532 and Secretary of State v. Mask & Co., AIR 1940 PC 105. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

(emphasis supplied)

In the subsequent decision in Mafatial Industries Ltd. & Ors. vs. Union of India & Ors., [(1997) 5 SCC 536], this Court went on to observe that an Act cannot bar and curtail remedy under Article 226 or 32 of the Constitution. The Court, however, added a word of caution and expounded that the constitutional Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute.

12. Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on this Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers

under the Constitution, to do complete justice to the parties. Even while exercising that power, this Court is required to bear in mind the legislative intent and not to render the statutory provision otiose. In a recent decision of a three Judge Bench of this Court in Oil and Natural Gas Corporation Limited vs. Gujarat Energy Transmission Corporation Limited & Ors, [(2017) 5 SCC 42], the statutory appeal filed before this Court was barred by 71 days and the maximum time limit for condoning the delay in terms of Section 125 of the Electricity Act, 2003 was only 60 days. In other words, the appeal was presented beyond the condonable period of 60 days. As a result, this Court could not have condoned the delay of 71 days. Notably, while admitting the appeal, the Court had condoned the delay in filing the appeal. However, at the final hearing of the appeal, an objection regarding appeal being barred by limitation was allowed to be raised being a jurisdictional issue and while dealing with the said objection, the Court referred to the decisions in Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur & Ors., [(2008) 3 SCC 70], Commissioner of Customs and Central Excise vs. Hongo India Private Limited & Anr., [(2009) 5 SCC 791], Chhattisgarh State Electricity Board vs. Central Electricity Regulatory Commission & Ors., [(2010) 5 SCC 23] and Suryachakra Power Corporation Limited vs. Electricity Department represented by its Superintending Engineer, Port Blair & Ors., [(2016) 16 SCC 152] and concluded that Section 5 of the Limitation Act, 1963, cannot be invoked by the Court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity

Act.

15. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corporation of India Ltd. (supra), which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) Pvt. Ltd. vs. Union of India & Ors., AIR 2015 Guj. 97 and also of the Karnataka High Court in Phoenix Plasts Company vs. Commissioner of Central Excise (Appeal 1), Bangalore. 2013 (298) ELT 481 (Kar.). The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 1995 Act, cannot curtail the jurisdiction of the High Court under Article 226 and Article 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court

> cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose."
>
> [emphasis supplied]

23. The principle that can be discernible from the judgment in **Glaxo Smith Kline Consumer Health Care Limited [(2020) 19 SCC 681]**, is that even though the High Court has wide powers under Article 226 of the Constitution of India, that does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding limitation. It shall not do so, as a matter of course, when the aggrieved person could have availed of an alternative remedy in the manner prescribed by law. As noted hereinabove, the appellant has not made out any sufficient reason for not availing the alternative remedy available to her before the Tribunal. However, as already noticed above, the appellant has already filed a Securitisation Application before the

Tribunal, and the same is pending consideration.

In such circumstances, we are not expressing anything on the issue of limitation applicable to the remedy now availed by the appellant by filing the securitisation application before the Tribunal. However, we make it clear that the appellant is entitled to seek exclusion of the period, from the date of filing of the writ petition, i.e., on 09.11.2006, till the date of this judgment, from the operation of limitation in filing the Securitisation Application before the Tribunal. With the above observations and findings, this writ appeal stands dismissed.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE

MSA