



2025:KER:39233

C.R

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

WEDNESDAY, THE 4<sup>TH</sup> DAY OF JUNE 2025 / 14TH JYAISHTA, 1947OP (DRT) NO. 287 OF 2024PETITIONERS/PETITIONERS

- 1 MOIDEEN KOYA,  
AGED 67 YEARS  
S/O. SAIDOOTTY, M/S. MIX MAX KIDS TOYS, FOOT  
WEARS, THAMARASSERY, NOW RESIDING AT MANNIL  
THODUKAYIL HOUSE, VAVAD. P.O., KODUVALLY,  
THAMARASSERY. P.O., KOZHIKODE DISTRICT,  
PIN - 673572
- 2 MOHAMMED T.,  
AGED 41 YEARS  
S/O. AHAMMED KUTTY HAJI, FARAH BOUTIQUE,  
THAMARASSERY, NOW RESIDING AT THATTOOR HOUSE,  
KARINGAMANNA, TAMARASSERY, P.O., KOZHIKODE,  
PIN - 673573
- 3 MUHAMMED SINAN,  
AGED 32 YEARS  
S/O. ABDURAHIMAN, M/S. XAOMI MI, THAMARASSERY,  
NOW RESIDING AT KURUNTHOTTI, KANDI HOUSE, RAROTH  
AMSOM, THAMARASSERY TALUK, KOZHIKODE,  
PIN - 673573
- 4 DINOOP D.D.,  
AGED 43 YEARS  
S/O. D.D.IVAS, VARNAM STUDIO, KARADI, THAMARASSERY  
P.O., KOZHIKODE, NOW RESIDING AT RUNTHOTTI KANDI  
HOUSE, RAROTH AMSOM, THAMARASSERY TALUK,  
KOZHIKODE, PIN - 673573

BY ADV SRI.O.D.SIVADAS



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RESPONDENTS/RESPONDENTS:

- 1 M/S.PEGASUS ASSETS RECONSTRUCTION CO. PVT. LTD.,  
NO. 3/970 B - 2, UZHIZELI TOWERS, 1ST FLOOR,  
SUBHASH CHANDRA BOSE ROAD, PONNURUNII, VYTTILA,  
COCHIN, REPRESENTED BY ASSIGNEE REPRESENTED BY  
JIJIN A.M., S/O. BHASKARAN A.M., SENIOR MANAGER  
AND AUTHORIZED OFFICER, UZHIZELI TOWERS, 1ST  
FLOOR, SUBHASH CHANDRA BOSE ROAD, PONNURUNII,  
VYTTILA, COCHIN, PIN - 682019
- 2 THE REGISTRAR,  
DEBTS RECOVERY TRIBUNAL-I, ERNAKULAM, PIN -  
682016

BY ADV SRI.RENJITH.R

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR  
ADMISSION ON 04.06.2025, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



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**C.R****MOHAMMED NIAS C.P., J****.....  
O.P (DRT) No.287 of 2024****.....  
Dated this the 04<sup>th</sup> day of June, 2025****JUDGMENT**

The petitioners challenge Ext.P8 order passed by the Registrar of the Debts Recovery Tribunal 1, Ernakulam, declining to register the application preferred by the petitioners against the notice of dispossession served by the Advocate Commissioner on 05.06.2024. The Registry objected to the same on the ground that a consolidated Securitisation Application has been filed by four tenants.

2. It is to be noticed that all four applicants are tenants of the borrower occupying the secured asset. The dismissal of a consolidated application filed by multiple tenants, regarding the same cause of action, challenging the enforcement measures of the secured creditor under Section 17 of the SARFAESI Act, on the sole ground that separate applications must be filed by each tenant, is legally unsustainable, for multiple reasons.



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3. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) provides a comprehensive framework for creditors to enforce security interests while also establishing safeguards for aggrieved parties, including tenants. Section 17(1) explicitly states that "any person (including borrower)" aggrieved by measures under Section 13(4) may apply to the Debts Recovery Tribunal (DRT). The use of the term "any person" is broad and inclusive, encompassing not just borrowers but also third parties like tenants whose possessory or leasehold rights are affected by the secured creditor's actions.

4. Rule 13A of the Security Interest (Enforcement) Rules, 2002, read with Appendix X, prescribes the procedural format for such applications. Crucially, neither the Act nor the Rules contains any express prohibition against multiple aggrieved persons filing a single, consolidated application. The absence of such a prohibition suggests that the legislature did not intend to bar joint applications. This interpretation aligns with the general legal principle that procedural rules should facilitate, rather than obstruct, access to justice. The DRT, as a specialised forum, is expected to exercise flexibility in procedural matters to ensure



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that legitimate grievances are heard on merits.

5. When multiple tenants challenge the same secured creditor's action, such as the taking of possession or auction of a property, their grievances arise from a common cause of action, even if their lease agreements differ. The insistence on separate filings is an overly rigid interpretation unsupported by the Act or Rules.

6. It is profitable to refer to the judgment of the Supreme Court, in **Mardia Chemicals Ltd. v. Union of India [(2004) 4 SCC 311]**, which emphasised that tribunals should avoid hyper-technical objections that obstruct substantive justice. The relevant paragraphs are extracted hereunder:-

**“59. We may like to observe that proceedings under Section 17 of the Act, in fact are not appellate proceedings. It seems to be a misnomer. In fact it is the initial action which is brought before a Forum as prescribed under the Act, raising grievance against the action or measures taken by one of the parties to the contract. It is the stage of initial proceeding**



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like filing a suit in civil court. As a matter of fact proceedings under Section 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar under Section 34 of the Act in the present case. We may refer to a decision of this Court reported in (1974) 2 SCC p. 393 Smt. Ganga Bai Vs. Vijay Kumar and Ors. , where in respect of original and appellate proceedings a distinction has been drawn as follows:-

".....There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of civil nature and unless one's choice. It is no answer to a suit, howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of



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**appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."**

7. Furthermore, the DRT's rejection of a consolidated application contradicts the legislative intent behind SARFAESI, which seeks expeditious resolution of disputes. Requiring each tenant to file a separate application would lead to repetitive pleadings, conflicting interim orders, and unnecessary delays—outcomes that defeat the purpose of a summary adjudication mechanism under Section 17. Procedural rules should be interpreted to facilitate dispute resolution while ensuring timely and diligent pursuit of legal remedies. Procedural law is not to be tyrant but a servant, not an obstruction but an aid to justice.

8. Under such circumstances, Ext.P8 is set aside, and there will be a direction to the Registrar to number the application. The Debts Recovery Tribunal shall consider the case of the petitioners on merits, and orders shall be passed in accordance with law. The interim passed by this Court will continue for six



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weeks to enable the petitioners to seek appropriate relief from the Tribunal concerned.

The original petition is allowed as above.

**Sd/-  
MOHAMMED NIAS C.P.  
JUDGE**

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APPENDIX OF OP (DRT) 287/2024

## PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE NOTICE DATED 5.06.2024 ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

Exhibit P2 TRUE COPY OF CMP NO. 1153 OF 2024 DATED 03.05.2024 FILED BEFORE THE CJM COURT, KOZHIKODE

Exhibit P3 TRUE COPY OF THE ORDER IN CMP NO. 1153 OF 2024 DATED 22.05.2024 ISSUED BY CJM COURT, KOZHIKODE

Exhibit P4 EXT.P4 TRUE COPY OF THE INTERIM ORDER IN W.P.(C) NO.22044 OF 2024 DATED 19.06.2024 RENDERED BY THIS HON'BLE COURT.

Exhibit P5 TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.22044 OF 2024 DATED 28.06.2024 RENDERED BY THIS HON'BLE COURT.

Exhibit P6 TRUE COPY OF THE SECURITIZATION APPLICATION ALONG WITH STAY PETITION FILED BY THE PETITIONERS BEFORE HON'BLE DEBTS RECOVERY TRIBUNAL - I ERNAKULAM DATED 26.06.2024

Exhibit P7 09.07.2024 EXT.P7 TRUE COPY OF THE REPLY FILED BY THE PETITIONERS BEFORE THE HON'BLE DEBTS RECOVERY TRIBUNAL - I ERNAKULAM

Exhibit P8 17.08.2024 EXT.P8 TRUE COPY OF THE ORDER ISSUED BY THE HON'BLE DEBTS RECOVERY TRIBUNAL - I ERNAKULAM