IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Appellate Side)

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur
And
The Hon'ble Justice Chaitali Chatterjee (Das)

MAT 743 of 2026
IA No.CAN/2/2026

South Indian Bank Limited
Vs.
Propello Innovations Private Limited & Ors.
In
WPA 25431 of 2024
With
COT 56 of 2026
Propello Innovations Private Limited & Anr.
Vs.
South Indian Bank Limited & Anr.

For the appellant bank	:	Mr. Prabal Kumar Mukherjee, Senior Advocate Mr. Anirban Pramanick, Advocate
For the respondent no.1/ writ petitioner/borrower	:	Mr. Deepan Sarkar, Advocate Mr. Shahrukh Raja, Advocate Ms. Deepti Priya, Advocate
For the Reserve Bank of India	:	Mr. Utpal Bose, Senior Advocate Mr. D. K. Kundu, Advocate Mr. Arjun Basu, Advocate Ms. Aditi Biswas, Advocate
Heard on	:	15.07.2026
Judgment on	:	07.08.2026

Ravi Krishan Kapur, J:

1. This is an appeal against an order dated 26 February 2026 where the Learned Single Judge has held that the appellant bank had violated the Fair Lending Practice Penal Charges in Loan Accounts Guidelines dated 18 August 2023 (Guidelines) issued by the Reserve Bank of India (RBI).
2. The respondent no. 1 is a Micro Small and Medium Enterprise. The respondent no.2 is a director of the respondent no.1 company. In or about 2013, the borrowers had availed of credit facilities from the appellant bank. Subsequently, in 2020 the loans were restructured on the pretext of the borrowers facing severe financial crisis due to global downturn and stoppage of LOUs. The credit facilities sanctioned by the appellant bank were further renewed in 2020 on the pretext of Covid-19. In the meantime, diverse correspondence ensued between the parties where the borrowers had also requested for grant of Emergency Credit Loan Guarantee Scheme (ECLGS) by RBI. Later, the borrowers requested for reduction in the rate of interest including penal interest. In or about November 2023, the renewal sanction order was granted by the appellant bank increasing the rate of interest on the accounts maintained by the borrowers. By an e-mail dated 19 June 2024, the appellant bank notified the borrowers of an impending declaration as a Non Performing Asset (NPA). On 28 June 2024, the appellant bank requested the borrowers to deposit funds to service their accounts in order to keep them outside the ambit of being declared as NPA. On 28 and 29 June 2024, the borrowers deposited money in their accounts. Thereafter, the accounts of the borrower were debited by the

appellant bank on account of penal interest. On 8 July 2024, the borrowers received a communication from the appellant bank inter alia declaring their accounts as NPA. In this background, the writ petition was filed assailing the debiting of penal interest and additional interest which it is alleged is contrary to the Guidelines and consequentially challenging the declaration of the accounts of the borrowers as NPA.

3. On 7 August 2024, the appellant had issued a notice under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the Act) which was responded to under section 13(3)(A) by the borrower on 8 January 2026 long after expiry of the statutory period to respond to such notice. Admittedly, after the filing of the present writ petition, the appellant bank has also taken symbolic possession under section 13(4) of the Act. The borrower has filed an application under section 17 of the Act before the Debts Recovery Tribunal (DRT) which is still pending.

4. The primary grievance of the borrowers is against the classification of their accounts as NPA. It is contended that the appellant bank had arbitrarily levied and debited penal interest and additional interest on penal charges without granting any prior intimation or opportunity to the borrowers which is contrary to the Guidelines. It is also contended that despite submitting several proposals for restructuring, the appellant bank has neglected to consider the same and has proceeded to recover their dues and had also issued a recall notice invoking the bank guarantee demanding payment of Rs. 9 crores.

5. By the impugned order, the Learned Single Judge after recording the submissions of the parties arrived at a finding that the appellant bank had violated the Guidelines by realizing amounts from the accounts of the borrowers as penal interest in violation of clause 3 (vii) of the Guidelines and in effect, stalled the entire recovery proceedings. On the aspect of maintainability, it was found that since the challenge in the writ petition was against the Guidelines, the writ petition was maintainable.
6. On behalf of the appellant bank, it is contended that the writ petition was not liable to be entertained and should have been dismissed on the ground that the borrowers had a statutory alternative remedy under the Act.
7. On behalf of the borrowers, it is contended that the borrowers were seeking enforcement of their statutory obligations and the writ petition was maintainable. The violation of the Guidelines which had statutory force and had been issued in public interest were binding on the appellant bank. The consequential classification of the borrowers as a NPA was arbitrary and unlawful and could not have been adjudicated in a proceeding under section 17 of the Act. On merits, it is contended that the loan account had been active since 2013. Three additional loans were granted in 2020. During the interregnum, there was an amount in excess of Rs.10 crores which had been paid by the borrowers. The debiting of the borrowers amount with penal charges was not in accordance with the Guidelines and was liable to be treated as illegal. The debit in lieu of penal interest was the actual cause for the shortfall leading to the NPA status. The bank had unlawfully and illegally charged a higher rate of interest than the sanctioned rate. The bank has also failed to consider the different

settlement proposals which have been submitted by the borrowers. In such circumstances, the appeal was liable to be dismissed and the cross-appeal filed by the borrowers against the impugned order inasmuch as it did not interfere with the classification of the borrowers as NPA be allowed. In support of such contentions, reliance was placed on the decisions in *Olive Tree Retail Private Limited and Another vs. South Indian Bank Limited and Another 2023 SCC OnLine Cal 2397, Federal Bank Ltd. v. Sagar Thomas (2003) 10 SCC 733* and *Central Bank of India v. Ravindra, (2002) 1 SCC 367.*

8. Loans by financial institutions are granted from public money generated at the taxpayer's expense. Such loans do not become the property of the person taking the loan, but retain their character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment by the borrower ensures liquidity to facilitate loan to another in need by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. [*State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85 at para 15*].

9. The Act is a complete Code in itself. It provides for expeditious recovery of dues which have arisen out of loans granted by financial institutions and also provides for a remedy of appeal under section 18 before the Appellate Tribunal. The DRT is clothed with wide range of powers including the power to set aside an illegal order and grant consequential reliefs including repossession and payment of compensation and costs.

10. The power of the High Court to exercise jurisdiction under Article 226 of the Constitution is discretionary and equitable. It must be exercised in a

judicious and reasonable manner. The only discretion which the law recognizes is discretion in accordance with law. The foundation of a writ petition is the infringement of a legal right which necessarily depends on unblameworthy conduct of the person seeking relief. *(ITC Ltd. v. Blue Coast Hotels Ltd., (2018) 15 SCC 99 at para 54).*

11. In *United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110* it has been held as follows:

> ***"42.*** *There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). 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 Sections 17 and 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.*
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> ***43.*** *Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 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 Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*
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> ***44.*** *While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is*

bound to keep in view while exercising power under Article 226 of the Constitution.

45. *It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.*

55. *It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the Sarfaesi Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.*"

12. There are innumerable decisions which have reiterated and re-emphasized the above principle i.e. that if an effective alternative statutory remedy is available to a person, the Court should not entertain a petition under Article 226 of the Constitution. This Rule is to apply with greater rigour in matters involving recovery of dues of banks and other financial institutions which deal with public money. Legislation enacted by Parliament for recovery of dues are a Code in themselves inasmuch as they contain a comprehensive procedure for recovery of the dues including an appellate mechanism. Thus, it is best to ensure that a person must exhaust the remedies available under the statute before approaching the Writ Court. (*Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311, Union Bank of India v. Panchanan Subudhi, (2010) 15 SCC 552, Kanaiyalal Lalchand Sachdev v. State of Maharashtra, (2011) 2 SCC 782, Sri Siddeshwara Cooperative Bank Ltd. v. Ikbal, (2013) 10 SCC 83, Agarwal Tracom (P) Ltd. v. Punjab National Bank, (2018) 1 SCC 626, State Bank of Travancore v.*

Mathew K.C., (2018) 3 SCC 85, South Indian Bank Limited and Ors vs Naveen Mathew Philip and Anr. (2023)17 SCC 311, Celir LLP v. Bafna Motors (Mumbai) (P) Ltd., (2024) 2 SCC 1) and *PHR Invent Educational Society vs. UCO Bank (2024) 6 SCC 579*.

13. The indisputable facts of this case would reveal that a notice under section 13(2) had been issued on 17 August 2024. On 8 January 2026, the borrowers had under section 13(3)(A) of the Act belatedly responded to such notice. The appellant bank had also initiated action under section 13 (4) of the Act and symbolic possession of the secured assets was taken. On 10 January 2026, notices were issued by the appellant bank and a paper publication was made. Subsequently, an application under section 17 of the Act being SA 522 of 2026 was filed by the borrowers before the DRT praying for the following reliefs:-

> *a. The Notice dated 07.08.2024 issued by the Defendants to the Applicants under Section 13(2) of the SARFAESI Act, 2002, Possession Notice dated 08.01.2026 issued by the Defendants under Section 13(4) of SARFAESI Act, 2002, Paper Publication dated 10.01.2026 published in The Echo of India in English about Possession Notice, Paper Publication if any published in Bengali newspaper about Possession Notice and all past and future steps and measures that have already been taken or that may be taken in future by the Defendant under SARFAESI Act and SARFAESI Rules 2002 against the Applicants or in respect of the properties of the Applicants as described in Schedules A to E hereto be set aside and/or quashed.*
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> *b. An order of injunction be issued restraining the Respondents from acting or acting any further pursuant to Notice dated 07.08.2024 issued by the Defendants to the Applicants under Section 13(2) of the SARFAESI Act, 2002, Possession Notice dated 08.01.2026 issued by the Defendants under Section 13(4) of SARFAESI Act, 2002, Paper Publication dated 10.01.2026 published in The Echo of India in English about Possession Notice, Paper Publication if any published in Bengali newspaper about Possession Notice and all past and future steps and measures that have already been taken or that may be taken in future by the Defendants under SARFAESI Act and SARFAESI Rules, 2002 against the Applicants or in respect of the properties of the Applicants as described in Schedules A to E hereto.*

14. The point of maintainability has been addressed by the Learned Single Judge as follows:

> *"The respondent bank has challenged the maintainability of the present writ petition but this Court finds that the petitioners have challenged the act of the bank on the allegation of violation of the conditions for Fair Lending Practice-Penal Charges in Loan Accounts issued by the Reserve Bank of India, thus this Court is of the view that the writ petition is maintainable".*

15. In view of the trigger under sections 13(2), 13(3)(A), 13(4) and 17 of the Act having been invoked this was simply not a case which should have been entertained by the Writ Court. The borrowers had an alternative, efficacious statutory remedy under the Act and had invoked the same. The prayers in the application under section 17 of the Act indicate that the notices under section 13(2) and 13(4) had been assailed before the DRT. Significantly, the violation of the Circulars issued by the RBI was also a ground in such application. This aspect of the matter has not been addressed in the impugned judgment. The time consumed by the Trial Court and now before this Court is nothing but ill designed and all this while the borrowers have continued to enjoy the principal and the interest on a staggering amount in excess of Rs. 10 crores. The cryptic manner in which the point of maintainability of the writ petition has been addressed by the Trial Court vitiates the impugned judgment. Courts casually and in a cavalier manner entertain such writ petitions which only has a deleterious impact on the recovery process. (*South Indian Bank Ltd. v. Naveen Mathew Philip, (2023) 17 SCC 311).*

16. It is true that an alternative remedy by itself does not divest the High Court of its power under Article 226 of the Constitution in an appropriate case,

though, ordinarily a writ petition should not be entertained when an efficacious alternate remedy is provided by law. The matter should have rested here. However, for the sake of completeness, the points addressed by the borrower are also dealt with.

17. During the course of hearing of this appeal, upon a query being raised by this Bench as to whether the 2023 Guidelines were valid and subsisting, all the parties feigned ignorance. It was only after three adjournments that the RBI produced the 2025 Directions whereby the Guidelines and in particular the Guideline dated 18 August 2023 had been categorically withdrawn as on 28 November 2025 and has been absorbed in the RBI Commercial Bank/Responsible Business Conduct Directions 2025 (Directions). By virtue of such Directions, the RBI had withdrawn with immediate effect 9445 Circulars being Circulars or Instructions which have now been consolidated in the new Directions, making the 2023 Guidelines which is the subject matter of the writ petition and the bedrock of the impugned judgment obsolete and redundant.

18. This vital and material fact had not been brought to the attention of the Learned Single Judge nor was the same incorporated in the pleadings by either of the parties including the appellant bank or the RBI. It is true that the repeal and savings clause in the Directions (Rule 462) provides for the Directions to be in addition to and not in derogation of any other law or regulations for the time being (Rule 464). Nevertheless, there has been no consideration of this aspect of the matter in the impugned judgment. This is a glaring infirmity in the impugned judgment and makes the same unsustainable. In this background, the entire premise of the writ petition

and the resultant impugned judgment is fundamentally flawed and erroneous.

19. The contention of the borrower that they have repaid at least Rs. 9.2 crores out of Rs. 10.12 crores and this fact *per se* demonstrates good conduct of the borrower is also misleading since the same does not account for the interest component enjoyed for more than three decades by the borrower. Interest is the lifeline of any business. As remarked "*The principal is the root. The interest the fruit. And the fruit is always the sweetest part*".

20. The question of the appellant not being amenable to Article 12 of the Constitution of India has also not been addressed by the Trial Court. It is true that a writ petition may be maintainable against a private authority for enforcement of its statutory obligations of public nature (*Anandi Mukta Sadguru Shree Mukta Jeevandas Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691 at paragraph 15-22 and Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733 at paragraph 33).* However, there is a factual dispute as to whether this point had at all been argued before the Learned Single Judge. The contention that the appellant bank was a private bank and that it was not amenable to Article 12 of the Constitution was disputed by the borrowers. In any event, this is an aspect which requires both pleadings and particulars and cannot be undertaken at this stage. Similarly, the question of whether the appellant bank had or had not charged a higher rate of interest cannot be gone into in a proceeding of this nature and is more suitably decided in an application section 17 of the Act.

21. Delay has a deleterious effect in such matters. The writ petition was filed on 1 October 2024 and the borrower had for a considerable period of time been enjoying interim reliefs. All this while the recovery proceedings have been substantially impeded. Such litigation unnecessarily burdens our overflowing dockets and is primarily initiated with the sinister purpose of procrastinating the recovery process. The larger question which arises for consideration is whether by interference in such matters, the Courts actually end up resolving disputes or only exacerbate the recovery process by creating further complications.

22. The contention of the borrowers that the appellant bank had failed to consider the different proposals submitted by the borrowers is equally misconceived. On the contrary, the facts reveal than an OTS proposal submitted by the borrower had been accepted by the appellant bank on 30 August 2025. However, the borrowers had defaulted which resulted in withdrawal of the same. "Approaching the Court for consideration of an offer by a borrower has not only been frowned upon by the Hon'ble Supreme Court but does not give the borrower any enforceable legal right to approach the Writ Court." (*South Indian Bank vs. Rabin Mathew Philip, (2023) 7 SCC 311 at paragraph 15*). The repeated attempts of the borrowers to seek permission to sell all their immovable properties without any interference from the appellant bank is not only commercially imprudent but also mischievous inasmuch as it usually does not fetch the true and realizable value of such assets. In such circumstances, there is also no equity which the borrower can claim in seeking a One Time Settlement. In a society which is governed by the Rule of Law, citizens must be made to

adhere to their consciously undertaken contractual obligations. Aberrations have now become the Norm. And even the bald want a *haircut* which the *system* merrily bestows on them.

23. The decision relied on by the borrowers in *Olive Tree Retail (P) Ltd. v. South India Bank Ltd.* (Supra) is distinguishable and inapposite. There is no vested right which any borrower has in having its proposal for a One Time Settlement being considered. In the scheme of the Act, the remedy at the stage of issuance of a section 13(2) notice lies in responding under section 13(3-A) and this is no reason to bypass the statutory mechanism. (*Devi Ispat Limited and another vs. State Bank of India and others, (2014) 5 SCC 762* para 9). The ploy of impleading the RBI or any third party to wriggle out of the folds of the Act and create an illusion of a cause of action is not to be encouraged. This is not a ground nor the stage at which the recovery proceedings are to be jettisoned or stultified. The contention of the appellant bank that the borrowers have a remedy under the RBI/ Integrated Ombudsman Scheme, 2021 is flawed and rejected. The Scheme is applicable only to services provided by a regulated entity and does not include recovery of debts or the classifying of an account as NPA.

24. To conclude, in a world where obscurity is seen as a virtue and clarity a vice we are best allowed to let sleeping doctrines lie. The admitted facts of this case are that a loan was taken by a debtor which remains unpaid. Regardless of the bristling questions of law and the unnaturally created plea of natural justice, two questions which also require to be enquired of in such matters are: *Have you received the money*? If yes, *how and when do you propose to repay the same*? Bank defaulters are a bane to any healthy

economy. There are a plethora of a reasons as to why the recovery proceedings are delayed. One such reason is the lack of intent and seriousness in pursuing the same. On occasions, the conduct of the bank and financial institutions also evidence apathy and indifference whether intentional or accidental. Then there is always the lurking doubt as to Who is arguing Whose case? And how the deck has been stacked up in favour of the borrower. To add, is the recourse to Courts which further delays recovery. It is trite law that questions of legal rights and liability should be resolved by application of the law and not by exercise of discretion. All of this only enures to the benefit of the delinquent defaulter. The solution being not to tinker in such commercial matters involving a lender and a borrower when the legislature has provided a specific mechanism for appropriate redressal. Needless to remind ourselves that the mantra is one of *ease of doing business* and not ease of doing fraud. This is not to undermine the recent legislative changes which have drastically reduced the number of defaulters in the country. Ultimately, it is only "*We The People Of India*" who suffer.

25. In view of the above, the appeal succeeds. MAT 743 of 2026 stands allowed. CAN 2 of 2026 is disposed of. WP 25431 of 2024 stands dismissed on the ground that borrowers have a statutory alternative efficacious remedy under the Act. COT 56 of 2026 being the cross appeal filed by the borrower also stands dismissed. It is made clear that all the points on merits are left open to be adjudicated upon by the DRT without being influenced by this order. In view of the kite flying exercise and abuse of process by the borrowers, costs are assessed at Rs. 5 lacs to be paid to the appellant bank

within a period of eight weeks from the date of this order. In default, the same be included in the claim of the appellant bank against the borrowers albeit without any interest.

(Ravi Krishan Kapur, J.)

I agree

(Chaitali Chatterjee Das, J.)