



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.11656 OF 2026

Zuhair Mohamedali Merchant ... Petitioner
Vs.
IDFC Bank represented by its Managing Director
and others ... Respondents

Ms. Hemali Kurne (through VC) a/w. Mr. Dayanand H. for Petitioner.

Mr. Nikhil Rajani i/b. M/s. V. Deshpande & Co. for Respondent Nos.1 to 3.

Ms. Yahya Ghoghari a/w. Mr. Mustafa Shabbir Shamim, Mr. Prasanna Pawar,
Ms. Nafisa Shamim i/b. Shamim & Co. for Respondent No.4.

Mr. Milind More, Additional GP for Respondent-State.

**CORAM : MANISH PITALE &
FARHAN P. DUBASH, JJ.**

DATE : MAY 07, 2026

P.C. :

- . Heard learned counsel for the petitioner.
2. By this writ petition, the petitioner has sought the following reliefs at prayer clauses (a) and (b):-

“a) To declare that the notification dated 29-05-2015, in unmistakable terms, declares that the MSME-borrower has no obligation to make an application for resolution of stress and, on the contrary, that banks and financial institutions are duty-bound to identify incipient stress based on the illustrative signs indicated in Annexure-I to the RBI Circular dated 17-03-2016; and further, that in any case where the bank has failed to identify incipient stress, it is duty-bound to classify the account as SMA-1 if the default is more than 31 days and as SMA-2 if the default is more than 61 days, and thereafter shall constitute a Committee and make a reference to that Committee for resolution of stress; and further, that the Committee is empowered to permit recovery in terms of Para 5(3)(iv) if the resolution of stress is not feasible; and

b) In furtherance of prayer (a) above, to declare that the



judgments of the Supreme Court in *Pro Knits v. Canara Bank & Ors.* (2024) 10 SCC 292 and *Shree Shree Swami Samarth Construction & Anr v. The Board of Directors of NKGSB Co-op Bank & Ors.* were rendered per incuriam and sub silentio and will not bind the courts and tribunals in this country under Article 141 of the Constitution, inasmuch as-

i) in *Pro Knits*, the Court had, contrary to the letter and spirit of the notification, observed that if the MSME had allowed its account to be classified as NPA and for recovery action to be initiated, having failed to bring to the notice of the bank that it is an MSME supported by identifiable and verifiable documents, it cannot be allowed to "thwart" the SARFAESI action at a later stage; and

ii) in *Shree Shree Swami Samarth*, the Court observed that if the MSME had not even replied to the notice under Section 13(2) and claimed protection as an MSME supported by an affidavit, the recovery action cannot thereafter be challenged-

which, to repeat, are contrary to the very letter as well as the spirit of the notification and have created a scenario where the said judgments have been instrumental in denying the benefit of the notification to MSMEs across the country."

3. It is to be noted that this very petitioner had earlier filed Writ Petition (L) No.13410 of 2023. The said writ petition along with a bunch of other writ petitions was disposed of by a judgement and order dated 11.01.2024 passed by a Division Bench of this Court. A challenge raised to the said common judgement and order culminated in judgement of the Supreme Court in the case of *Pro Knits Vs. Board of Directors of Canara Bank and others*, (2024) 10 SCC 292. It is to be noted that the petitioner was one of the appellants in the group of appeals decided by the Supreme Court bearing Civil Appeal No.8333 of 2024. Thereafter, the Supreme Court further clarified the position of law in a subsequent judgement and order in the case of *Shri Shri Swami Samarth Construction and Finance Solution and another Vs. Board of Directors of NKGSB Co-op. Bank Ltd. and others*, 2025 SCC OnLine SC 1566.

4. The position of law with regard to the applicability of the



notification dated 29.05.2015 issued by the Union of India and the circular dated 17.03.2016 issued by the Reserve Bank of India, was clarified in the said judgements of the Supreme Court.

5. As noted hereinabove, in one of the prayers i.e. prayer clause (b) of this writ petition, the petitioner is seeking a declaration that both the aforesaid judgements of the Supreme Court were rendered *per incuriam* and that they ought not bind the courts and tribunals in this country.

6. Such reliefs cannot be countenanced before this Court in writ jurisdiction. If at all the petitioner is aggrieved by the aforementioned judgements of the Supreme Court, the petitioner is at liberty to take appropriate steps.

7. The present writ petition cannot be entertained. Accordingly, it is dismissed.

(FARHAN P. DUBASH, J.)

(MANISH PITALE, J.)

Minal Parab