



WEB COPY

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2015

CORAM:

THE HONOURABLE DR. JUSTICE S.TAMILVANAN

and

THE HONOURABLE MR. JUSTICE V.S.RAVI

W.P. (MD) No.2148 of 2015

and

M.P. (MD) No.1 of 2015

R.Santhi

... Petitioner

Vs.

- 1.The Joint Secretary (ABC),
Ministry of Finance,
Department of Economic Affairs,
Room No.34-C,
New Delhi 110 001.
- 2.The Reserve Bank of India,
Tamil Nadu State Office,
Chennai.
- 3.The Punjab National Bank,
New No.158, Old No.781, Rayala Towers,
Mount Road,
Chennai 600 002.
- 4.The Authorized Officer,
Punjab National Bank,
Kattukottai Branch,
Vadachennimalai Post,
Attur Taluk,
Salem District.

... Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 3 to pass orders against the petitioner's representation dated 16.12.2014 and consequently direct the fourth respondent to desist the auction sale to be held on 19.02.2015 based on the auction sale notice dated 05.01.2015.

For Petitioner

: Mr. Ananth C.Rajesh

<https://hcservices.ecourts.gov.in/hcsservices/>

For Respondents

: Mr.Pala Ramasamy for R3 and R4

**O R D E R****(Order of this Court was made by S.TAMILVANAN,J.)**

The Writ petition has been filed under Article 226 of the Constitution of India, seeking an order in the nature of Writ of Mandamus, directing the respondents 1 to 3 to pass an order against the petitioner's representation dated 16.12.2014 and consequently, direct the fourth respondent to desist the auction sale to be held on 19.02.2015 based on the auction sale notice dated 05.01.2015.

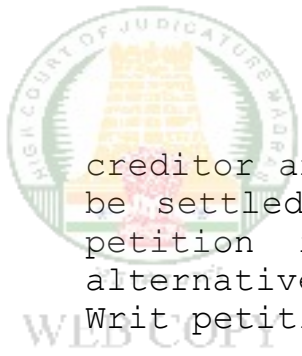
2.Heard the learned counsel appearing for the petitioner as well as the learned standing counsel appearing for the respondents 3 and 4.

3.It is not in dispute that the petitioner has obtained loan from Punjab National Bank, the third respondent herein. Being a secured creditor, the Bank is entitled to bring the property for sale to realise the amount due and payable under the relevant Act. Accordingly, auction sale notice dated 05.01.2015 was issued and the auction sale to be held on 19.02.2015. It cannot be said that the action taken by the respondents 3 and 4 are against law or there is any infringement of the fundamental right of the petitioner. It is well settled that a legal action taken by the Bank cannot be construed as illegal, when there is efficacious alternative remedy available to the petitioner and having admitted the fact that the action is being taken under SARFAESI Act, the petitioner is not entitled to maintain the Writ petition seeking an order in the nature of Writ of Mandamus or any other order challenging the auction sale to be conducted by the fourth respondent herein.

4.Learned standing counsel appearing for the respondents 3 and 4 submitted that the allegation raised by the petitioner is only against the legal action taken by the respondents 3 and 4 on the property given by the debtor as security, hence, the Writ petition is not legally sustainable.

5.It is seen that the petitioner has filed an application under SARFAESI Act in SA Sr.No.1735 of 2012 before the Debts Recovery Tribunal, Madurai and the same is pending for more than two years in the Sr. stage, for which, the petitioner alone is responsible and hence, she cannot blame the other side for not even getting it numbered. As the application was not properly filed by the petitioner before DRT, it seems that the same was not even numbered which cannot be a reason for filing this Writ petition.

<https://hcservices.ecourts.gov.in/hcservices> open to the petitioner to approach the respondents 3 and 4 and settle the dues and release the property. Having admitted the fact that the Punjab National Bank is the secured



creditor and also the fact that the amount due and payable was not be settled by the petitioner, we are of the view that this Writ petition is not legally sustainable as there is efficacious alternative remedy is available to the petitioner, hence, this Writ petition is liable to be dismissed.

7. In the result, the Writ petition is dismissed. No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1. The Joint Secretary (ABC),
Ministry of Finance,
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Room No.34-C,
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2. The Reserve Bank of India,
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3. The Punjab National Bank,
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Punjab National Bank,
Kattukottai Branch, Kattukottai,
Vadachennimalai Post,
Attur Taluk, Salem District.

+1cc to Mr. Ananth C. Rajesh, Advocate Sr.No.7578

nbj

AA/06.04.2015/3p- 6c/

W.P. (MD) No.2148 of 2015
18.02.2015