BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

W.P(MD)No.4038 of 2015

K.Kaviarasu ...Petitioner

Vs.

1.The Regional Manager,
State Bank of Travancore,
Regional Office, 260, V.V.Complex,
Avarampalayam Road,
New Siddhapudur,
Coimbatore 641 044.

2.The Chief Manager,
State Bank of Travancore,
34, Suppiahpillai Towers,
Chinnakadai Street,
Tiruchirappalli.

3.The Authorised Officer,
State Bank of Travancore,
(Associate of the State Bank of India)
34, Suppiahpillai Towers,
Chinnakadai Street,
Tiruchirappalli.

4.The Banking Ombudsman,
Reserve Bank of India Building,
No.16, Rajaji Salai,
Chennai. ...Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari, to calling for the sale notice of the 3rd respondent under Section 13(2) of SARFAESI Act issued to the petitioner dated 28.2.2015 and quash the same.

For Petitioner : Mr.R.Rajagopal
For Respondents : Mr.S.Devaraj

ORDER

(Order of the Court was made by S.TAMILVANAN,J)

This writ petition has been filed invoking Article 226 of the Constitution of India, seeking an order in the nature of Writ of Certiorari to call for the records pertaining to the sale notice issued by the third respondent under Section 13(2) of the SARFAESI Act, dated 28.02.2015 and quash the same.

2.It is submitted by the learned counsel for the petitioner that the petitioner is nothing to do with the alleged loan. He is studying higher studies in U.K. However, his name is included in the show cause notice.

3.Per contra, learned standing counsel for the respondents submits that there is a statutory bar as it relates to Section 13(2) of the SARFAESI Act and according to him, the State Bank of Trivancore is a secured creditor since the loan amount obtained was not repaid, under the SARFAESI Act, the Bank has every right to bring the property for sale. In the aforesaid circumstances, the writ petition filed invoking Article 226 of the Constitution of India is not maintainable.

4.It is well settled that there is a statutory bar under the SARFAESI Act, if there is any proceedings initiated under Section 13(2) of the said Act. When there is efficacious alternative remedy available before the Debts Recovery Tribunal or Debts Recovery Appellate Tribunal, without availing such remedy, the petitioner cannot directly approach this Court and further the petitioner says that he is a student, if he is minor, he should approach the Civil Court and establish his claim with regard to his rights in the property. Based on the disputed question of fact, the petitioner cannot maintain the writ petition when there is action initiated by the respondent bank under the SARFAESI Act.

5.In the aforesaid circumstances, we are of the view that the writ petition is not legally maintainable. Accordingly, the writ petition is dismissed. No costs. Consequently, M.P(MD)No.1 of 2015 is closed.

Sd/-
Assistant Registrar(Per Admn)

/True copy/

Sub Assistant Registrar

To

1.The Regional Manager, State Bank of Travancore,
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4.The Banking Ombudsman,
Reserve Bank of India Building,
No.16, Rajaji Salai,
Chennai.

+1CC to M/s.Pala Ramasamy, Advocate in SR.14401
+1CC to M/s.S.Devaraj, Advocate in SR.13810
+1CC to M/s.Dr.Rajagobal, Advocate in SR.13840

W.P(MD)No.4038 of 2015
23.03.2015

sms
PBK 25/03/2015 ::2P-8C:(IT)