

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.26587 of 2016

and WMP.No.22776 of 2016

Well Stores (Madras) Pvt.Ltd.,
No.21D, C.V.Raman Road
2nd Floor, Alwarpet
Chennai-600 018
Rep. By its Director R.James ...Petitioner

Vs.

- 1.Indian Bank
by Branch Manager
Muthialpet Branch, Chennai-03
- 2.Asset Reconstruction Company (India) Limited
The Ruby, 10th Floor
29, Senapati Bapat Marg
Dadar (West) Mumbai-400 028
- 3.Maxwell Exim Private Limited
No.24, G.S.T.Road
Guindy, Chennai-600 032
- 4.The Registrar
Debts Recovery Tribunal-II
Spencer Tower
4th floor, Chennai-600 002 ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring that the execution of the sale/assignment by the 1st respondent in favour of the 2nd respondent dated 07.12.2007 registered as Document No.8815/2007 before the District Registrar, Madras South is illegal, void and non-est in law and not binding on the petitioner since the proceeding are launched under RDDB & FI Act 1993 which do not contemplates assignment of asset before issue of the Recovery Certificate.

For Petitioner : Dr.S.N.Amarnath

O R D E R

(Order of the Court was made by HULUVADI G. RAMESH,J.)

This Writ Petition is filed praying to issue a Writ of Declaration declaring that the execution of the sale/assignment by the 1st respondent in favour of the 2nd respondent dated 07.12.2007 registered as Document No.8815/2007 before the District Registrar, Madras South is illegal, void and non-est in law and not binding on the petitioner since the proceedings are launched under RDDB & FI Act 1993, do not contemplate assignment of asset before issue of the Recovery Certificate.

2. Firstly, we are of the considered view that the writ petition is not maintainable on the ground that there is effective and efficacious alternate remedy available under the SARFAESI Act (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) and the grounds raised are pure questions of fact and there is no justification to by pass the remedy available under the SARFAESI Act. Secondly, it is for the petitioner to exhaust its remedy before the competent authority, as prescribed under the provisions of law. It is relevant to note herein that in the decision reported in (1983) 2 SCC 433 [Titaghur Paper Mills Co.Ltd. vs. State of Orissa] again referred to in (2010) 4 SCC 772[Raj Kumar Shivhare vs. Assistant Director, Directorate of Enforcement and another], the Apex Court pointed out that where a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute alone must be availed of.

3. With the above observation, the writ petition is dismissed. No costs. Consequently, connected WMP is closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

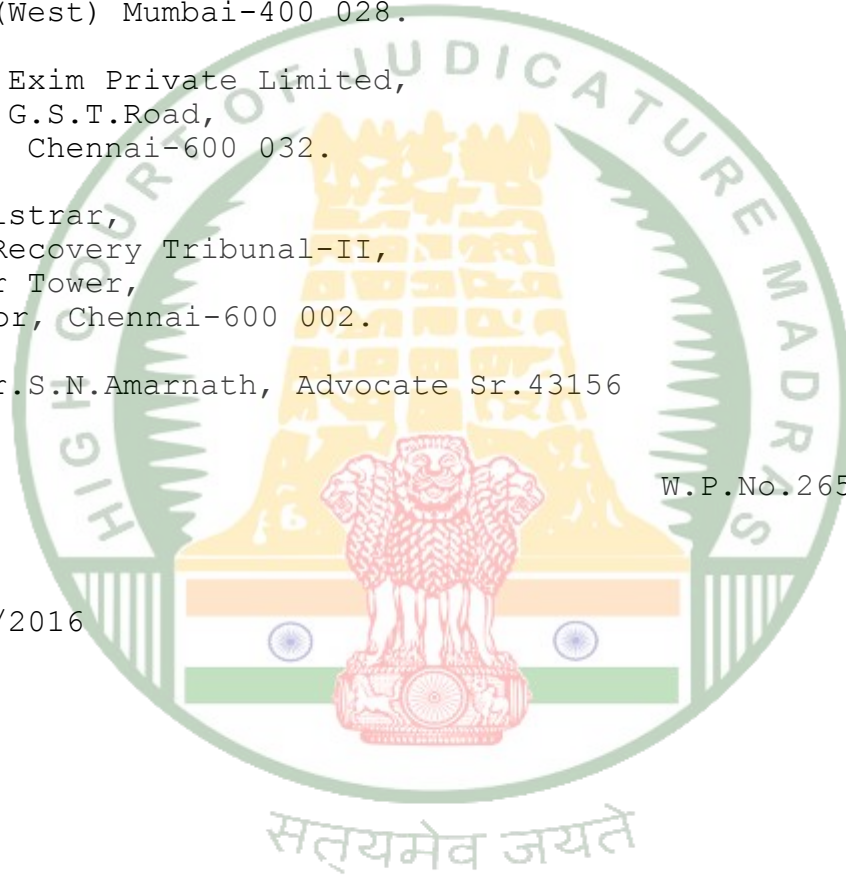
To

- 1.Indian Bank,
by Branch Manager,
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Spencer Tower,
4th floor, Chennai-600 002.

+1cc to Dr.S.N.Amarnath, Advocate Sr.43156

W.P.No.26587 of 2016

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srg 24/08/2016



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