

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.11531 of 2012 &
M.P.Nos.1 and 2 of 2012

R.Kasthuri Bai
.. Petitioner

v.

- 1.Indian Bank
Chetpet Branch
812, E.V.R. High Road
Chennai - 600 010
- 2.Visalam Industries
Prop. N. Sivakumar
S/o. Marutanda Nadar
No.10, Depot Street
Choolai, Chennai - 600 112.
3. Iyyasamy Nadar
4. N.V.Sivagurunathan
5. N.V.Muthukumar
- 6.Bhanu Prakash
- 7.Mangilal
- 8.Poonaram
- 9.H.Dharmichand
- 10.K.Kumarasamy

- 11.The Recovery Officer
Debts Recovery Tribunal - I
Chennai

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certioraified Mandamus calling for the records of the 11th respondent dated 12.01.2011 relating to the confirmation of the petitioner's immovable property measuring 27 cents out of 96 cents in S.No.2/1 with building in Old. No.1/45, New No.1/71, Post Office Street, Thaiyur Market Road, Kelambakkam in favour of the respondents 6

to 10, quash the same and direct he respondents to put the petitioner back in possession of the property.

For Petitioner : Mr.T.Sezhian

For Respondents : Mr.V.Bhiman - for R1
for M/s.Sampathkumar Associates

Mr. S.Sethuraman - for R7 to R10
Not Ready in Notice - for R2 to R4
No Appearance - for R5 & R6

O R D E R

(Order of the Court made by M.DURAI SWAMY, J.)

The petitioner has filed the above writ petition to issue a Writ of Certioraified Mandamus to call for the records of the 11th respondent dated 12.01.2011 relating to the confirmation of the petitioner's immovable property in favour of the respondents 6 to 10, to quash the same and direct the respondents to put the petitioner back in possession of the property.

2. The petitioner has challenged the order passed by the Debts Recovery Tribunal-I, Chennai dated 12.01.2011.

3. When the petitioner has got appeal remedy before the Debt Recovery Appellate Tribunal under Section 30 of the Recovery of Debts and Bankruptcy Act, 1993, without exhausting the appeal remedy, the petitioner has filed the Writ Petition under Article 226 of the Constitution challenging the order passed by the Debts Recovery Tribunal.

4.The Hon'ble Supreme Court of India in the judgments reported in 2018 (3) Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.] and 2018 (1) Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others] held that the aggrieved party cannot challenge the SARFAESI proceedings directly by filing a Writ Petition under Article 226 of the Constitution of India without exhausting the remedy available to them.

5.The ratio laid down by the Apex Court in the above referred judgments is applicable to the present case.

6. In view of the ratio laid down by the Hon'ble Supreme Court, we are not inclined to entertain the Writ Petition. The Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed. However, it is open to the petitioner to challenge the order passed by the Debts Recovery Tribunal-1, Chennai, before the Debt Recovery Appellate Tribunal, in accordance with law.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

Rj
To

1. Indian Bank
Chetpet Branch
812, E.V.R. High Road
Chennai - 600 010

2. The Recovery Officer
Debts Recovery Tribunal - I, Chennai

+1 CC to Mr.M. Sethuraman, Advocate sr 75462.
+1 CC to Mrs.R.Meenal, Advocate sr 75549

W.P. No.11531 of 2012 &
M.P.Nos.1 and 2 of 2012

NRI (CO)
SP (27/11/2018)

WEB COPY