

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.21843 of 2018 and

W.M.P.No.25617 of 2018

Jayabarathi Kannan

.. Petitioner

Vs.

1.The Authorized Officer/
Assistant General Manager,
Karur Vysya Bank Limited,
Asset Recovery Branch, 2nd Floor,
KVB Towers,
No.568, Anna Salai,
Teynampet, Chennai - 600 018.

2.P.Dhanasingh Gnanadurai

3.Mangalaselvi Florence

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of declaration declaring the Sale Certificate registered as Doc.No.2595 of 2018 in the Office of the SRO, Madhavaram, Chennai on 03.05.2018 executed by the 1st respondent in favour of the respondents 2 & 3 in pursuance of the E-Auction notice dated 25.01.2018 as invalid.

For Petitioner : Mr.R.Ravichandran

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 declaration to declare the Sale Certificate registered as Document No.2595 of 2018 in the Office of the Sub Registrar, Madhavaram, Chennai on 03.05.2018 executed by the 1st respondent in favour of the respondents 2 & 3 in pursuance of the E-Auction notice dated 25.01.2018 as invalid.

2.It is the case of the petitioner that her husband availed loan from the 1st respondent - Bank in the year 2013 and the property which belonged to her was mortgaged with the Bank as security for the due repayment of the loan amount. A sum of Rs.49, 75,000/- was sanctioned as Secured Over Draft on 04.02.2013. Admittedly, the petitioner's husband has not repaid the loan from January 2015 .Therefore, the 1st respondent - Bank initiated proceedings under the SARFAESI Act and brought the mortgaged property to sale and the property was also sold in the E-Auction to the respondents 2 & 3 and the Sale Certificate was issued in their favour and the same was also registered in the Office of the Sub Registrar, Madhavaram, Chennai on 03.05.2018.

3.It is the case of the petitioner that the property was undervalued and was sold only for a sum of Rs.60,10,000/- and therefore, the Sale Certificate issued to the respondents should be declared as invalid. That apart, the petitioner also contended that the 1st respondent - Bank has not followed Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002 by publishing the auction details in two leading Newspapers.

4.Admittedly, the petitioner has filed the above Writ Petition challenging the Sale Certificate without approaching the Debts Recovery Tribunal.

5.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 before the Debts Recovery Tribunal.

6.The ratio laid down by the Apex Court squarely applies to the present case.

7.In these circumstances, we are of the considered view that the above Writ Petition cannot be entertained for the reason that the petitioner has not exhausted the alternative remedy available to her before the Debts Recovery Tribunal. However, it is needless to say that it is open to the petitioner to challenge the impugned Sale Certificate before the Debts Recovery Tribunal in accordance with the provisions of the SARFAESI Act.

8.For the reasons stated above, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

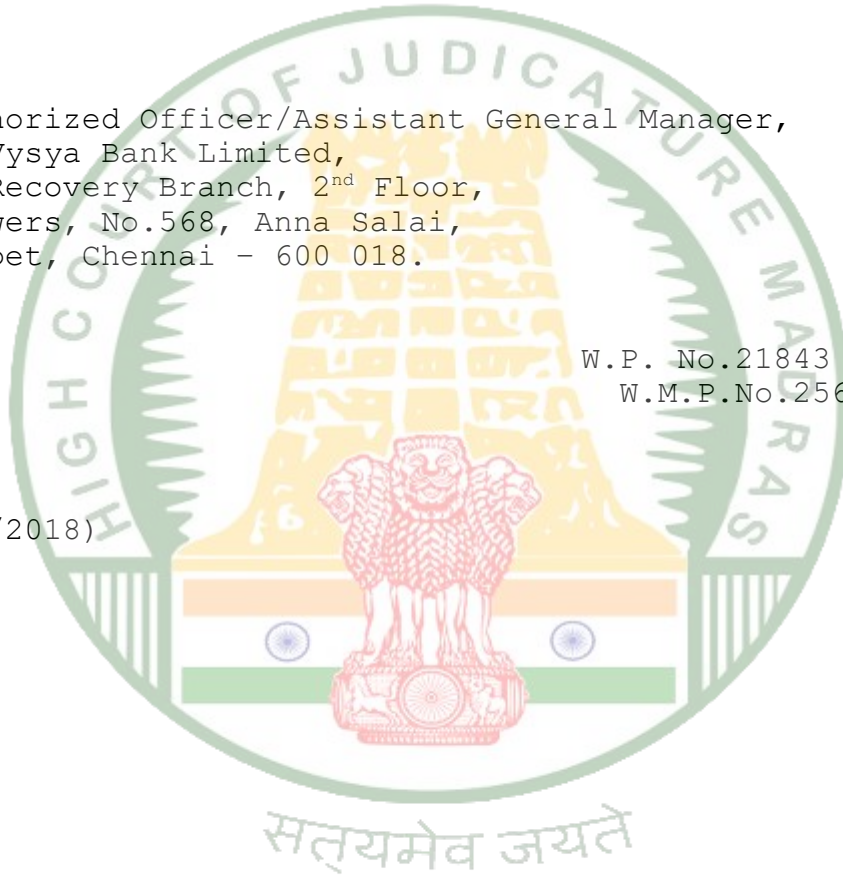
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To

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NMI (CO)
GSP(17/09/2018)



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