

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAIWAMY

W.P.No.23578 of 2018
and W.M.P.Nos.27531 and 27532 of 2018

M/s.Rajeswari Motors Private Limited,
rep. by its Director A.Shenbagadevi,
No.63, R.S. Road, Palaipalayam,
Thiruchengode Taluk,
Namakkal District-638
006.

.. Petitioner

Vs.

Bank of Baroda,
rep. by its Authorized Officer/Chief Manager,
Erode Branch,
No.60, Thiruvengadam Swamy Street,
Erode-638 001.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records on the file of the respondent in the impugned action sale dated 04.8.2018 published on 05.8.2018 in Dhinamani and Indian Express (both Coimbatore edition) and issued to the petitioner on 06.8.2018 in ERD:ADV:45:241 and quash the same.

For Petitioner : Mr.C.Surana

For Respondent : Mr.V.Bheeman

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O R D E R

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

The petitioner has filed the above writ petition to issue a Writ of Certiorari to call for the records on the file of the respondent in the impugned auction sale notice dated 04.8.2018 published on 05.8.2018 in Dhinamani and Indian Express (both Coimbatore edition) and issued to the petitioner on 06.8.2018 and quash the same.

2. Mr.V.Bheeman, learned counsel takes notice on behalf of the respondent Bank and submitted that the petitioner has filed the above writ petition without exhausting alternative remedy available before the Debts Recovery Tribunal under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'SARFAESI Act').

3. Since it is settled position that aggrieved party cannot approach the High Court under Article 226 of the Constitution of India without exhausting the alternative remedy, we are not inclined to entertain the writ petition.

4. The learned counsel for the petitioner submitted that the petitioner may be granted ten days time for filing appeal before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act challenging the auction sale notice.

5. The learned counsel appearing on either side submitted that the auction is scheduled to be held on 12.09.2018.

6. In view of the submissions made by the learned counsel appearing on either side, we are not inclined to stay the auction scheduled to be held on 12.09.2018, however, in the interest of justice, we stay the confirmation of sale alone. We make it clear that the auction scheduled to be held on 12.09.2018 shall go on, however, confirmation of sale alone is stayed for a period of ten days from today, enabling the petitioner to approach the Debts Recovery Tribunal in accordance with law.

7. With these observations, the writ petition is dismissed. No costs. Consequently, W.M.P.Nos.27531 and 27532 of 2018 are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Authorized Officer/Chief Manager,
Bank of Baroda,
Erode Branch,
No.60, Thiruvengadam Swamy Street,
Erode-638 001.

+1cc to M/s.Sampathkumar Associates, SR.NO.63110

+1cc to M/s.S.C.Surana, Advocate SR.NO.63145

sm:11.9.2018

W.P.No.23578 of 2018