

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.12.2018

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

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.22842 of 2018 and
W.M.P.No.26695 of 2018

- 1.Anithadevi
- 2.T.Paulrajhun
- 3.Pranav Raj Pandian
- 4.Shaagun

.. Petitioners

Vs.

- 1.The Authorized Officer,
(For Sholinganallur Branch),
Tamil Nadu Mercantile Bank Ltd.,
Chennai Region, No.45, Pulla Avenue,
Shenoy Nagar, Chennai - 600 030.
- 2.Tamil Nadu Mercantile Bank,
rep by its Branch Manager,
No.125/1, I.T.Highway,
Old Mahabalipuram Road,
Sholinganallur, Chennai.
- 3.Suresh Pandian
- 4.M/s.WIN R GLOBAL
rep by its Partner Suresh Pandian,
No.18, Railway Station Road, 1st Floor,
Near Padi Raja Theatre, Korattur,
Chennai - 600 080.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records pertaining to the possession notice dated 03.08.2018 issued by the 1st respondent in respect of the loan account No.196700950100051 and to quash the same and consequently direct the 1st respondent to receive the sale consideration directly from the 2nd petitioner and execute sale certificate in favour of the petitioners 3 & 4 after obtaining a fair valuation report in respect of the schedule property and communicating the sale price to the 3rd respondent.

For Petitioners : Mr.M.L.Joseph
for M/s.Chennai Law Associates

For Respondents : Mr.R.R.Pradheep (R1 & R2)
Mr.A.Saravanan (R3 & R4)

O R D E R
(Order of the Court made by M.DURAI SWAMY, J.)

The petitioners have filed the above Writ Petition to issue a Writ of Certiorari mandamus to call for the records pertaining to the possession notice dated 03.08.2018 issued by the 1st respondent and to quash the same and consequently direct the 1st respondent to receive the sale consideration directly from the 2nd petitioner and execute sale certificate in favour of the petitioners 3 & 4 after obtaining a fair valuation report in respect of the schedule property and communicating the sale price to the 3rd respondent.

2.The petitioners have filed the Writ Petition challenging the possession notice dated 03.08.2018 without exhausting the alternative remedy by way of an appeal under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal.

3.1.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 parties cannot challenge the SARFAESI proceedings directly by filing a Writ Petition under Article 226 of the Constitution of India without exhausting the appeal remedy available to them.

3.2.In a recent decision of the Supreme Court dated 05.10.2018 in ICICI Bank Limited v. Umakanta Mohapatra, Civil Appeal Nos.10251 - 10265 of 2018 arising out of SLP (C) Nos.16758 - 16772 of 2015, the Supreme Court has referred to the decision in Authorized Officer, State Bank of Travancore and Anr. vs. Mathew K.C., (2018) 3 SCC 85, and has observed that despite several judgments, including the decision of Mathew K.C., supra, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI') and keep granting interim orders in favour of persons who are Non-Performing Assets. Further, the Apex Court held that Writ Petition filed by the aggrieved party without exhausting the statutory remedy available under the SARFAESI Act and Recovery of Debts Due to Banks and Financial Institutions Act, is not maintainable.

4.Since the petitioners have filed the Writ Petition directly without exhausting the alternative remedy under Section 17 of the SARFAESI Act, the ratio laid down by the Hon'ble Supreme Court in the above referred judgments squarely applies to the present case. Following the same, we are not inclined to entertain the Writ Petition. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Authorized Officer,
(For Sholinganallur Branch),
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Chennai Region, No.45, Pulla Avenue,
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2.The Branch Manager,
Tamil Nadu Mercantile Bank,
No.125/1, I.T.Highway,
Old Mahabalipuram Road,
Sholinganallur, Chennai.

+2ccs to M/s.Chennai Law Associates, Advocate, S.R.No.86976
+1cc to Mr.S.Sethuraman, Advocate, S.R.No.86931
+1cc to Mr.A.Saravanan, Advocate, S.R.No.8693187138

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VBA(CO)

rrs 03/01/2019

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