

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAIWAMY

W.P. No.23232 of 2018 and
W.M.P.No.27119 of 2018

T.N.Balakrishnan

.. Petitioner

v.

1 The Debts Recovery Tribunal
1670, VRS Towers
Trichy Road, Ramanathapuram
Coimbatore
Tamil Nadu - 641 045

2 Muthoot Fincorp Ltd.
Rep. by its Authorised Officer
Muthoot Centre Punnen Road
Trivandrum
Kerala - 695 039

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, to call for the records pertaining to the impugned interim conditional order dated 01.08.2018 in S.A. 278/2018 passed by the 1st respondent and quash the same.

For Petitioner : Mr.V.Pravin Rathinam
For Respondent : R1 - Tribunal
Mr.Saikrishnan - for R2

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 pertaining

to the impugned conditional order dated 01.08.2018 in S.A. 278 of 2018 passed by the 1st respondent and to quash the same.

2. The petitioner filed I.A.No.1802 of 2018 in S.A.No.278 of 2018 on the file of the Debts Recovery Tribunal, Coimbatore to stay all further proceedings in pursuance of the possession notice dated 06.07.2018 issued by the 1st respondent.

3. The Debts Recovery Tribunal, by order dated 01.08.2018, granted an order of interim injunction on condition that the petitioner paying a sum of Rs.90,00,000/- [Rupees ninety lakhs only] on or before 01.09.2018 as 1st installment and another sum of Rs.90,00,000/- [Rupees ninety lakhs only] on or before 01.10.2018 as 2nd installment. Challenging this order, the petitioner has filed the above writ petition.

4. Admittedly, the petitioner has not filed an appeal under section 18 of the SARFAESI Act, before the Debt Recovery Appellate Tribunal, challenging the impugned order.

5. It is settled position that the aggrieved party can not file writ petition without exhausting the appeal remedy available under the Act.

6. 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 proceedings initiated under the SARFAESI Act directly by filing a writ petition under Article 226 of the Constitution without exhausting the alternative remedy before the the Debts Recovery Tribunal.

7. The ratio laid down in the above referred judgments is applicable to the present case.

8. Since the petitioner has filed the writ petition without exhausting the appeal remedy, we are not inclined to entertain the writ petition. The writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Rj

To

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+1cc to Mr.Saikrishnan, Advocate sr.no.66712

W.P. No.23232 of 2018 and
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pvs(co)
nr 16/10/2018



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