

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.24105 of 2018 and

W.M.P.No.28093 of 2018

Tvl.S.K.Decorators,
rep by its Partner S.U.Sirajdeen
No.117, A.K.Nagar,
Near Narayana Guru Road,
Saibaba Colony, Coimbatore - 641 011.

.. Petitioner

Vs.

1.The Presiding Officer,
Debt Recovery Tribunal - Coimbatore,
Jawan's Bhavan, 2nd & 3rd Floor,
No.27, Travellers Bungalow Road,
Coimbatore - 641 018.

2.India Bulls Housing Finance Ltd.,
rep by its Authorized Officer,
No.590, Sathya Towers, 2nd Floor,
D.B.Road, R.S.Puram,
Coimbatore - 641 002.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records of the 1st respondent in I.A.No.398 of 2018 in S.A.No.56 of 2018 dated 03.03.2018 and to quash the same as illegal, arbitrary and against the facts and circumstances of the case.

For Petitioner : Mr.Silambanan, Senior Counsel
for M/s.Kaavya Silambanan Associates

For Respondents : R1 - Tribunal
Mr.T.Saikrishnan (R2)

O R D E R

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

The petitioner has filed the above Writ Petition to issue a Writ of certiorari to call for the records of the 1st respondent in I.A.No.398 of 2018 in S.A.No.56 of 2018 dated 03.03.2018 and to quash the same.

2.The petitioner has filed the appeal in S.A.No. 56 of 2018 on the file of the Debts Recovery Tribunal, Coimbatore challenging the sale notice dated 23.01.2018. In the said appeal, the petitioner also filed an application in I.A.No.398 of 2018 to stay all further proceedings in pursuance of the auction sale notice dated 23.01.2018. The Debts Recovery Tribunal, by order dated 03.03.2018, granted an order of interim injunction restraining the respondent - Bank from confirming the sale till 04.05.2018, subject to payment of Rs.14 lakhs on or before 03.04.2018 as 1st installment and another sum of Rs.14 lakhs on or before 03.05.2018 as 2nd installment and also incorporated the default clause. Challenging this order, the petitioner has filed the above Writ Petition without approaching the Debt Recovery Appellate Tribunal under Section 18 of the SARFAESI Act.

3.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.

3.1.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.The ratio laid down by the Hon'ble Apex Court in the above referred judgments is applicable to the present case.

5.Since the petitioner has filed the Writ Petition without exhausting the appellate remedy available to them under Section 18 of the SARFAESI Act, we are not inclined to entertain the Writ Petition. Accordingly, the same is dismissed. However, it is open to the petitioner to file an appeal against the order passed in I.A.No.398 of 2018 in S.A.No.56 of 2018 dated 03.03.2018 before the Debt Recovery Appellate Tribunal in accordance with law. If the Appellate Tribunal entertains the appeal, it is open to the petitioner to raise all the issues raised in the present Writ Petition. No costs. Consequently, the connected miscellaneous petition is close.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Presiding Officer,
Debt Recovery Tribunal - Coimbatore,
Jawan's Bhavan, 2nd & 3rd Floor,
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Coimbatore - 641 018.

2.The Authorized Officer,
India Bulls Housing Finance Ltd.,
No.590, Sathya Towers, 2nd Floor,
D.B.Road, R.S.Puram,
Coimbatore - 641 002.

+1cc to Mr.Sai & Bharath, Advocate, S.R.No.81640

W.P. No.24105 of 2018 and
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VGII (CO)
GSP(11/12/2018)