

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.7355 of 2014 and
M.P.No.1 of 2014

M/s.K.K.Polycolor India Ltd.,
rep by its Managing Director K.K.Kankani,
K.K.Villa, No.32, Olympic Colony,
Mogappair, Chennai - 600 050.

: Petitioner

Vs.

1.The Debts Recovery Tribunal - III,
Spencers Building, Chennai.

2.The Authorized Officer,
M/s.Assets Care & Reconstructions Enterprises Ltd.,
6th Floor, IFCI Tower,
No.61, Nehru Place,
New Delhi - 110 019.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for the records pertaining to the order dated 04.02.2014 passed by the 1st respondent in M.A.No.151 of 2013 in S.A.(SR).No.4207 of 2013 and to quash the same and consequently direct the 1st respondent to take up the S.A.(SR).No.4207 of 2013 and decide the same on merits.

For Petitioner : Mrs.P.V.Rajeswari
For Respondents : Mr.K.Harikrishnan (R2)
R1 - Tribunal

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 certiorarified mandamus to call for the records pertaining to the order dated 04.02.2014 passed by the 1st respondent in M.A.No.151 of 2013 in S.A.(SR).No.4207 of 2013 and to quash the same and consequently direct the 1st respondent to take up the S.A.(SR).No.4207 of 2013 and decide the same on merits.

2.Challenging the order passed in M.A.No.151 of 2013 in S.A.(SR).No.4207 of 2013, the petitioner has filed the above Writ Petition under Article 226 of the Constitution.

3.The petitioner filed the application in M.A.No.151 of 2013 to condone the delay of 71 days in filing the application under Section 17 of the SARFAESI Act challenging the possession notice dated 02.05.2013. The Debts Recovery Tribunal - III, Chennai, by order dated 04.02.2014, dismissed the petition, finding that the proceedings under Section 17 of the Act are in lieu of a Civil Suit, which remedy is ordinarily available, but for the bar under Section 34 of the Act. Challenging the order passed by the Debts Recovery Tribunal, the petitioner has got remedy by way of an appeal before the Debt Recovery Appellate Tribunal, Chennai under Section 18 of the SARFAESI Act. Without exhausting the appellate remedy available to the petitioner, the present Writ Petition has been filed under Article 226.

4.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.

5.The ratio laid down by the Apex Court in the above referred judgments is applicable to the present case.

6.Since the petitioner has filed the Writ Petition without exhausting the appellate 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 VII)

//True Copy//

Sub Assistant Registrar

va

To

- 1.The Debts Recovery Tribunal - III,
Spencers Building, Chennai.
- 2.The Authorized Officer,
M/s.Assets Care & Reconstructions Enterprises Ltd.,
6th Floor, IFCI Tower,
No.61, Nehru Place,
New Delhi - 110 019.
- 3.The Managing Director
M/s.K.K.Polycolor India Ltd.,
K.K.Villa, No.32, Olympic Colony,
Mogappair, Chennai - 600 050.

+2cc to Mr.K.Harishankar, Advocate, S.R.No.68433

+1cc to Mr.P.V.Rajeswari, Advocate, S.R.No.68611

W.P. No.7355 of 2014 and
M.P.No.1 of 2014

WEB COPY

JP(CO)
GSP(17/10/2018)