

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.24861 of 2018 and

W.M.P.No.28898 of 2018

M/s.Veeshun Exim

Represented by its Proprietrix

Mrs.G.Vasanthi

Aged about 54 years

W/o. Mr.Gunasekaran

No.20, Muthukrishnan Street

Kondithope

Chennai - 600 079 .. Petitioner

v.

The Chief Manager

Indian Bank

Asset Recovery Management Branch II

Fourth Floor No.55, Ethiraj Salai

Chennai - 600 008 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the records pertaining to the impugned notice of sale under private treaty issued by the respondent dated 04.09.2018 and to quash the same.

For Petitioner : Mr.P.Ravikumar

for Mr.S.Joel

For Respondent : Ms.S.R.Sumathy

O R D E R

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

The above writ petition has been filed by the petitioner to issue a Writ of Certiorari to call for the records pertaining to the impugned sale notice under private treaty dated 04.09.2018, issued by the respondent and to quash the same.

2. The petitioner has filed the above writ petition challenging the sale notice dated 04.09.2018 without approaching the Debts Recovery Tribunal under section 17 of the SARFAESI Act. That apart, the Division Bench of this Court, by order dated 20.09.2018, granted an order of interim injunction on condition that the petitioner paying a sum of Rs.2,00,000/- [Rupees two crores only] to the

respondent bank before 12.00 noon on 24.09.2018. However, the Division Bench of this court made it clear that failure to comply with the said condition, the respondent bank can go ahead with the proposed auction scheduled on 24.09.2018.

3. The learned counsel appearing on either side submitted that the petitioner has not complied with the conditional order dated 20.09.2018 by depositing a sum of Rs.2,00,000/- [Rupees two crores only].

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 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.

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

6. Since the petitioner has filed the writ petition without exhausting the alternative remedy available to him under section 17 of the SARFAESI Act, we are not inclined to entertain the writ petition. The writ petition is dismissed. However, it is open to the petitioner to file the appeal before the Debts Recovery Tribunal, challenging the sale notice dated 04.09.2018, in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

(V.K.T., C.J.) (M.D., J.)

26.09.2018

Index : Yes/No

Speaking Order/Non Speaking Order

Rj

To

The Chief Manager

Indian Bank

Asset Recovery Management Branch II

Fourth Floor No.55, Ethiraj Salai

Chennai - 600 008

THE HON'BLE CHIEF JUSTICE
AND
M. DURAISWAMY,J.

Rj

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