

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.11.2018

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

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.2614 of 2018

1.C.Balasubramanian
2.P.Suresh
3.G.Umanath

.. Petitioners

Vs.

The Authorised Officer,
DENA Bank,
Coimbatore Main Branch,
R.S. Puram, Coimbatore - 641 002.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondent, the Authorised Officer, DENA Bank, Coimbatore Main Branch, R.S. Puram, Coimbatore - 641 002 to proceed against the Trust properties, item No.1, mentioned in the schedule in E-Auction Sale Notice dated 06.12.2017.

For Petitioner : Dr.S.R.Kalyani

For Respondent : Mr.N.Ravishankar Vallatharasu

O R D E R

(Order of the Court was made by M.DURAI SWAMY, J.)

The petitioners have filed the above writ petition to issue a Writ of Mandamus directing the respondent, the Authorised Officer, DENA Bank, Coimbatore Main Branch to proceed against the Trust properties, item No.1 mentioned in the schedule in e-auction sale notice dated 06.12.2017.

2. It is the case of the petitioners that the Trust availed credit facilities from the respondent Bank. Since the borrower committed default in repaying the loan amount, the respondent Bank initiated proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'SARFAESI Act') and issued Section 13(2) and Section 13(4) notices. Subsequently, the respondent Bank issued e-auction sale notice for recovery of a sum of Rs.19,09,09,301/-. The respondent Bank also issued another e-auction sale notice for a sum of Rs.20,86,06,574/- against six properties.

3. It is the case of the petitioner that the first item of the property belong to the Trust and the other properties mentioned as item Nos.2 to 6 are the personal properties of the petitioners. The petitioners contended that the first item of the property itself sufficient to meet the payment of the respondent Bank. Therefore, the e-auction sale notice dated 06.12.2017 should be modified only for bringing the property belonging to the Trust.

4. When the matter is taken up for hearing, the learned counsel appearing for the respondent Bank submitted that the auction has not concluded on 29.12.2017 and therefore, the respondent Bank had issued a fresh auction sale notice to the petitioner. In other words, the e-auction sale notice dated 06.12.2017, which is the subject matter of the present writ petition has become infructuous. If the petitioners are aggrieved over the auction sale notice, the remedy open to them is to file an appeal before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

5. 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.

6. 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 SARFAESI Act 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.

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

8. Since the petitioners have filed the Writ Petition without exhausting the alternate remedy available to them, we are not inclined to entertain the present writ petition.

9. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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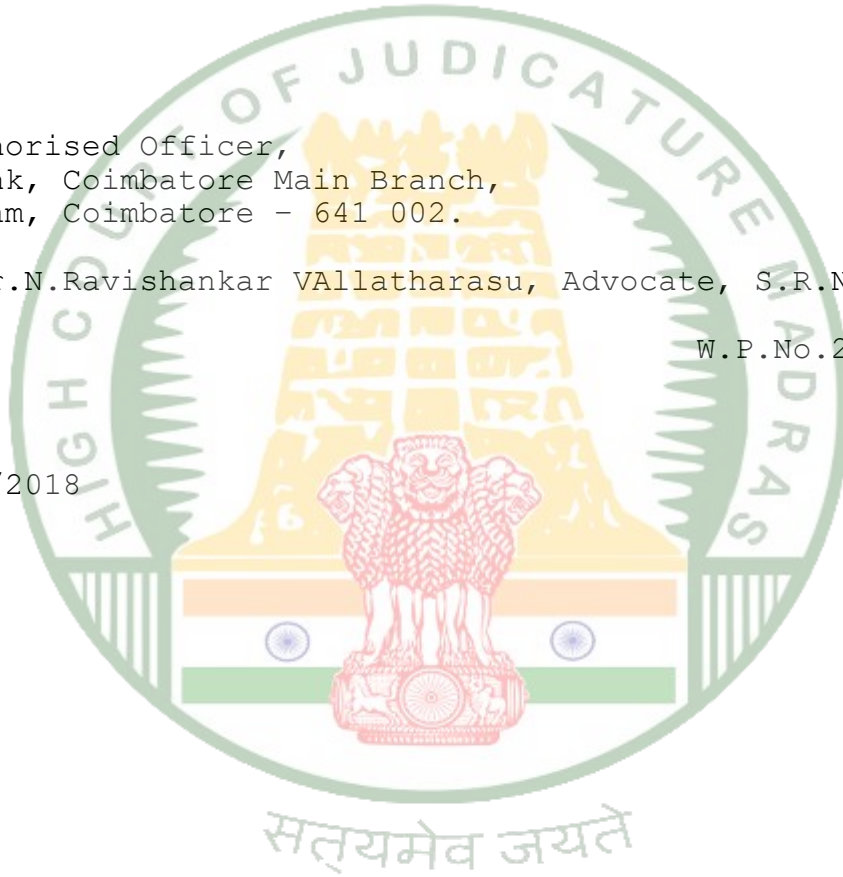
1.The Authorised Officer,
Dena Bank, Coimbatore Main Branch,
R.S.Puram, Coimbatore - 641 002.

+lcc to Mr.N.Ravishankar VALLATHARASU, Advocate, S.R.No.80011

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SR(CO)

rrs 06/12/2018



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