

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. Nos.27820 of 2014 & 15426 of 2015 and
M.P.No.1/2014 & 1/2015 in W.P.No.27820/2014
and M.P.Nos 1 & 2/2015 in W.P.No.15426/2015

M/s.Srinidhi Fabrics Private Ltd
No.6/27, Gandhi Nagar Colony II Street
Erode 638 009

Rep. By its Director

.. Petitioner in both Wps

v.

1. The Tamil Nadu Industrial Investment
Corporation Ltd. (TIIC)
692, Anna Salai, Nandanam
Chennai - 600 035
Rep. By its Chairman & Managing Director

2. The Authorized Officer-cum-Branch Manager
The Tamil Nadu Industrial Investment
Corporation Ltd. (TIIC)
C.S. Sencottiah Complex, 2nd Floor
23, Chidambaram Colony, 80 Feet Road
Erode - 638 001

...Respondents in both WPs

3. Indian Overseas Bank
Rep. By its Manager
Erode Main Branch
Park Road, Erode

... 3rd Respondent in W.P.No.15426/2015

W.P.No.27820/2014 Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent herein relating to the notice dated 6.6.2014 under section 13(2) of the SARFAESI Act, the letter dated 12.8.2014 of the 2nd respondent and the notice dated 15.10.2014 of the 2nd respondent under section 13(2) of the SARFAESI Act.

(Prayer amended as per order dated 29.10.2014 in M.P.No.2 of 2014 in W.P.No.27820 of 2014)

W.P.No.15426/2015 Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent herein relating to the Symbolic Possession notices dated 5.5.2015, 13.5.2015 and 13.5.2015 issued by the 2nd respondent herein under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 and quash the same and forbear the respondents from initiating and pursuing any action for recovery against the petitioner under provisions of the SARFAESI Act or any other law during the pendency of the proceedings in Application NO.50 of 2012 before the Board for Industrial and Financial Reconstruction, New Delhi.

For Petitioner : Mr.AR.L.Sundaresan
for Ms.AL.Gandhimathi

For Respondents : Mr.V.Ayyadurai, Senior Counsel
for Mr.K.Magesh - for R1 & R2

Mr.F.B.Benjamin George - for R3

COMMON ORDER

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

The petitioner has filed the Writ Petition in W.P.No.27820 of 2014 challenging Section 13(2) notice dated 06.06.2014 issued by the 2nd respondent-Bank. In W.P.No.15426/2015, the petitioner has challenged the Possession Notices dated 5.5.2015, 13.5.2015 and 13.5.2015 issued by the 2nd respondent-Bank.

2. Since the issue involved in both the Writ Petitions are inter-connected, the Writ Petitions are disposed of by this common order.

3. So far as W.P.No.27820 of 2014 challenging Section 13(2) notice is concerned, it is settled position that the aggrieved party cannot challenge a notice issued under Section 13(2). In these circumstances, the Writ Petition is liable to be rejected.

4. So far as W.P.No.15426 of 2015 is concerned, the petitioner has got alternative remedy by way of an appeal under section 17 of the SARFAESI Act before the Debts Recovery Tribunal.

5.1. 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.

5.2 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.

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

7. Since the petitioner has challenged the possession notices without exhausting the alternative remedy under section 17 of the SARFAESI Act, we are not inclined to entertain the Writ Petition in W.P.No.15426 of 2015.

8. In view of the reasons stated above, both the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Tamil Nadu Industrial Investment Corporation Ltd. (TIIC)
692, Anna Salai, Nandanam
Chennai - 600 035
Rep. By its Chairman & Managing Director
2. The Authorized Officer-cum-Branch Manager
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3. The Manager
Indian Overseas Bank
Erode Main Branch
Park Road, Erode

+2cc to Mr.K.Magesh, Advocate, S.R.No.88184 & 88185

+2cc to Ms.AL.Gandhimathi, Advocate, S.R.No.88761 & 88762

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AK(CO)
CS/09/01/2019