

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2018

CORAM :

The Hon'ble Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE
AND

The Hon'ble Mr.JUSTICE M.DURAISWAMY

W.P. No.28095 of 2017

and W.M.P.No.30184 of 2017

NA.Shivakhumar

.. Petitioner

-vs-

1.The Authorised Officer & Asst. General
Manager, Cosmos Co-operative Bank Ltd.,
Branch cum Regional Office at 3-5-798,
Prathima Schalass, New No.248, Street No.8,
Hydergudalang Koti Road, Hyderabad-500 029.

2.The Presiding Officer,
Debts Recovery Tribunal-III,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records in M.A.No.43 of 2016 in S.A. SR. No.4527 of 2016 dt. 10.11.2016 on the file of 2nd respondent and quash the same.

For Petitioner : Mr.Prakash Goklaney

For Respondents : Mr.Varun Srinivasan
for M/s.NVS & Asso., for R-1
: R-2 Tribunal

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सत्यमेव जयते

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner has approached this Court against the order of the Debts Recovery Tribunal-III, Chennai, dated 10.11.2016.

2.Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short 'SARFAESI'), clearly states that any person aggrieved by an order made by the Debts Recovery Tribunal may prefer an appeal to the Appellate Tribunal. In view of the fact that the petitioner has approached this Court against the order of Debts Recovery Tribunal, it would be appropriate that the

petitioner approaches the Debts Recovery Appellate Tribunal against the order of Debts Recovery Tribunal.

3.The Supreme Court in the case of United Bank of India vs. Satyavati Tondon, reported in (2010) 8 SCC 110 :: AIR 2010 SC 3413, has observed that when an alternate remedy is available, the writ petition should not be entertained. We may also state that the Constitution Bench of the Supreme Court in the case of Thansingh Nathmal vs Supdt. of Taxes, Dhubri, reported in AIR 1964 SC 1419, has observed that when there is an alternate remedy available, a writ petition should not be entertained.

4.The Hon'ble Supreme Court of India in Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C., reported in (2018) 3 Supreme Court Cases 85 and in Agarwal Tracom Private Limited Vs. Punjab National Bank and others, reported in (2018) 1 Supreme Court Cases 626, 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 before the Debts Recovery Tribunal.

5.In this view of the matter, we are not inclined to interfere and the petitioner is relegated to the remedy of challenging the order of the Debts Recovery Tribunal before the Debts Recovery Appellate Tribunal.

6.The writ petition is, thus, dismissed. No costs. Consequently, W.M.P.No.30184 of 2017 is also dismissed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

sra

To

The Presiding Officer,
Debts Recovery Tribunal-III,
Chennai.

+2ccs to Mr. Prakash Goklaney, Advocate, SR.No.66000
+2ccs to M/s. NVS & Associates, Advocate, SR.No.66600

W.P.No.28095 of 2017

SVN(CO)
rrs(16/10/2018)