

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.Nos.26564, 26577, 26586, 26594 & 26615 of 2018 and
W.M.P.Nos.30910, 30914, 30932, 30934, 30944,
30943, 30965, 30958, 30981 & 30984 of 2018

1.M/s.Uma Shankar Traders
rep by its Partner
K.Paramasivam,
119, Bhavani Road,
Erode - 638 004.

2.M/s.Sri Maharaja Refineries,
rep by its Partner
S.Saradha
119, Bhavani Road,
Erode - 638 004.

.. Petitioners in W.P.No.26564/2018

1.M/s.Maharaja Prawn Farming &
Oil Dealers Pvt. Ltd.,
rep by its Director
K.Paramasivam,
119, Bhavani Road,
Erode - 638 004.

2.M/s.Maharaja Kalaiararam Pvt. Ltd.,
rep by its Director
K.Paramasivam,
119, Bhavani Road,
Erode - 638 004.

.. Petitioners in W.P.No.26577/2018

M/s.Maharaja Sivam Industries Pvt. Ltd.,
rep by its Director
K.Paramasivam,
119, Bhavani Road,
Erode - 638 004.

.. Petitioner in W.P.No.26586/2018

1.K.Paramasivam
2.P.Sathyamoorthy
3.P.Sundari
4.P.Parameswari
5.M/s.Maharaja Industries,
rep by its Proprietor
K.Paramasivam,
3 to 5 at 119, Bhavani Road,
Erode - 638 004.

.. Petitioners in W.P.No.26594/2018

M/s.Maharaja Sathyam Industries Pvt. Ltd.,
rep by its Director
K.Paramasivam,
119, Bhavani Road,
Erode - 638 004.

.. Petitioner in W.P.No.26615/2018

Vs.

1.The Authorized Officer,
State Bank of India,
Stressed Assets Management Branch,
1112, Raja Plaza, Avinashi Road,
Coimbatore - 641 037.

2.State Bank of India,
rep by its Branch Manager,
Commercial Branch,
No.45, Sathy Road, Erode - 638 003.

3.The Registrar,
Debts Recovery Tribunal - Coimbatore,
Ex-services Centre, Jawans Bhavan,
2nd & 3rd Floor,
27, Travellers Bungalow Road,
Coimbatore - 641 018.

.. Respondents in all the 5 W.Ps

Petitions filed under Article 226 of the Constitution of India praying to issue Writs of certiorarified mandamus calling for the records relating to the orders dated 13.07.2018 passed by the 3rd respondent in I.A.Nos.1500, 1502, 1494, 1496 & 1498 of 2017 and I.A.Nos.1099, 1096, 1102, 1105 & 1090 of 2018 in S.A.Nos.226, 227, 223, 224 & 225 of 2017, quash the same and consequently forbear the 1st respondent from in any manner proceeding further based on the possession notice dated

09.06.2017 pending disposal of the appeals in S.A.Nos.226, 227, 223, 224 & 225 of 2017 pending on the file of the 3rd respondent.

For Petitioners : Mr.AR.L.Sundaresan, Senior Counsel,
(in all W.Ps) for M/s.S.Ramesh

C O M M O N O R D E R

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

Since the issue involved in all these Writ Petitions are identical, the Writ Petitions are disposed of by this common order.

2.The petitioners have filed the above Writ Petitions to issue Writs of certiorarified mandamus to call for the records relating to the orders dated 13.07.2018 passed by the 3rd respondent in I.A.Nos.1500, 1502, 1494, 1496 & 1498 of 2017 and I.A.Nos.1099, 1096, 1102, 1105 & 1090 of 2018 in S.A.Nos.226, 227, 223, 224 & 225 of 2017 and to quash the same and consequently, forbear the 1st respondent from in any manner proceeding further based on the possession notice dated 09.06.2017 pending disposal of the appeals in S.A.Nos.226, 227, 223, 224 & 225 of 2017.

3.The petitioners filed I.A.Nos.1500, 1502, 1494, 1496 & 1498 of 2017 in S.A.Nos.226, 227, 223, 224 & 225 of 2017 to stay all further proceedings in pursuance to the possession notice dated 09.06.2017, including taking physical possession of the properties. The Debts Recovery Tribunal, Coimbatore granted an order of status-quo on 03.08.2017. Subsequently, the respondent - Bank filed I.A.Nos.1099, 1096, 1102, 1105 & 1090 of 2018 to vacate the order of status-quo granted on 03.08.2017. The Debts Recovery Tribunal, by separate orders, dismissed the stay petitions in I.A.Nos.1500, 1502, 1494, 1496 & 1498 of 2017 and allowed I.A.Nos.1099, 1096, 1102, 1105 & 1090 of 2018. Challenging the orders passed by the Debts Recovery Tribunal, Coimbatore, the petitioners have filed the above Writ Petitions under Article 226 of the Constitution.

4.Admittedly, the petitioners have not challenged the impugned orders before the Debt Recovery Appellate Tribunal under Section 18 of the SARFAESI Act. When the petitioners have got remedy by way of appeal before the Debt Recovery Appellate Tribunal under Section 18, they cannot file the Writ Petitions under Article 226 of the Constitution without exhausting the appellate remedy.

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 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.

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

7.Since the petitioners have filed the Writ Petitions without exhausting the appellate remedy, in view of the ratio laid down by the Hon'ble Apex Court we are not inclined to entertain the Writ Petitions.

8.The learned senior counsel appearing for the petitioners submitted that liberty may be given to the petitioners to challenge the impugned orders dated 13.07.2018 before the Debt Recovery Appellate Tribunal within two weeks time.

9.For the reasons stated above, the Writ Petitions are dismissed. It is open to the petitioners to challenge the impugned orders dated 13.07.2018 in accordance with law within two weeks from today. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Authorized Officer,
State Bank of India,
Stressed Assets Management Branch,
1112, Raja Plaza, Avinashi Road,
Coimbatore - 641 037.

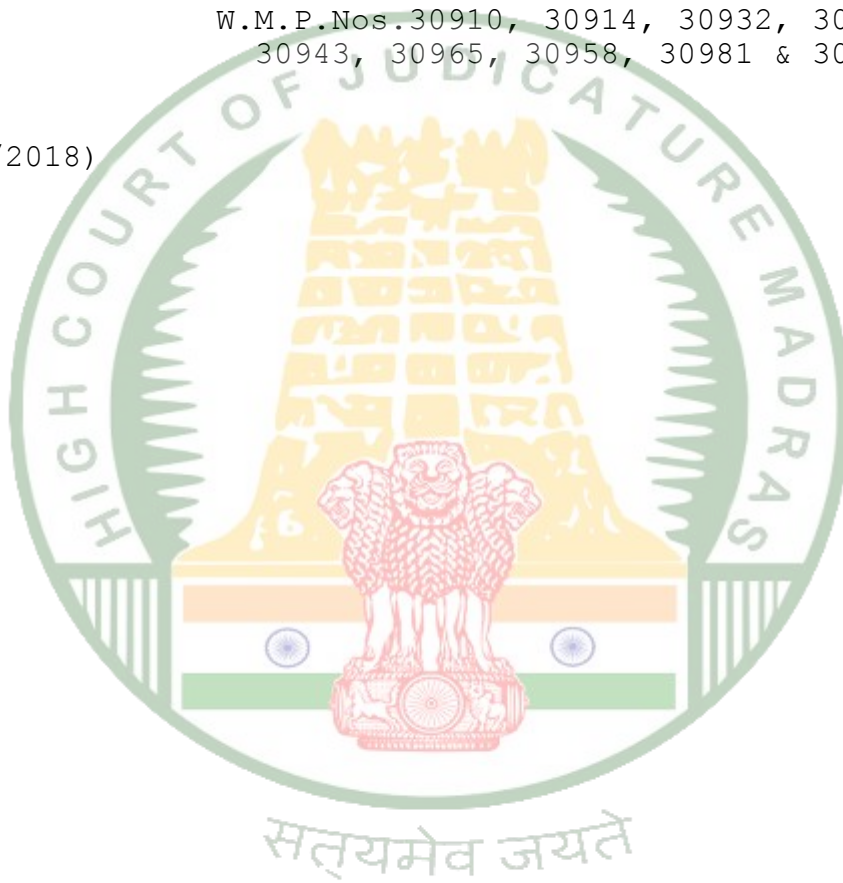
2.The Branch Manager,
State Bank of India,
Commercial Branch,
No.45, Sathy Road, Erode - 638 003.

3.The Registrar,
Debts Recovery Tribunal - Coimbatore,
Ex-services Centre, Jawans Bhavan,
2nd & 3rd Floor,
27, Travellers Bungalow Road,
Coimbatore - 641 018.

+5cc to Mr.S.Ramesh, Advocate, S.R.No.69205 to 69209

W.P.Nos.26564, 26577, 26586,
26594 & 26615 of 2018 and
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VSNII(CO)
GSP(08/10/2018)



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