IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.27970 of 2018 and
W.M.P.Nos.32543 & 32545 of 2018

B.Anjana Sharvesini .. Petitioner

v.

1. The District Collector cum
District Magistrate
Collector Office
Coimbatore - 641 018

2. The Branch Manager
Standard chartered Bank
509, Red Rose Plaza
D.B. Road, R.S. Puram
Coimbatore - 641 002 .. Respondents

Prayer:-
Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records in Proceeding No.25987/2016/E3, dated 31.08.2018 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.K. Gangadaran

O R D E R
(Order of the Court made by M.DURAISWAMY,J.)

The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records in Proceedings dated 31.08.2018 on the file of the 1st respondent and to quash the same.

2. The 1st respondent, by order dated 31.08.2018, in an application filed under section 14 of SARFAESI Act, directed the Tahsildar, Coimbatore North, to take possession of the mortgaged property/secured assets and hand over the secured assets to the secured creditor, viz., the 2nd respondent bank.

Challenging this order, the writ petitioner, who is neither a borrower nor a guarantor, has filed the above Writ Petition.

3. The learned counsel appearing for the petitioner submitted that the petitioner has filed an impleading application in S.A.No.281 of 2018 on the file of the Debts Recovery Tribunal, Coimbatore and the same is pending for consideration. The learned counsel further submitted that the petitioner has filed a Civil Suit in O.S.No.471 of 2018 on the file of the District Court, Coimbatore, to declare the memorandum of deposit of title deeds by the borrowers in favour of the 2nd respondent-bank as null and void and for partition and other reliefs.

4. If the petitioner is aggrieved over the order passed by the 1st respondent under section 14 of SARFAESI Act, the remedy open to the petitioner to challenge the same under section 17 of the SARFAESI Act, before the Debts Recovery Tribunal and not by way of a Writ Petition under Article 226 of the Constitution of India.

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 Further, the Hon'ble Supreme Court in Civil Appeal Nos. 10251-10265 of 2018 in the case of ICICI Bank Ltd., v. Uma Kantha Mohapatra Etc., by order dated 05.10.2018, held as follows:-

> " ... Despite several judgments of this Court, including a judgment by Honble Mr. Justice Navin Sinha, as recently as on 30.01.2018, in Authorized Officer, State Bank of Travancore and Anr. vs. Mathew K.C., (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are Non-Performing Assets (NPAs), which, in view of our recent judgment, which has followed earlier Reason:
>
> Judgments of this Court, held as follows:-
>
> 18. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works

(P) Ltd. and Another, (1997) 6 SCC 450, observing:-

> "32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

The writ petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside. The appeals are allowed in the aforesaid terms."

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 approached this court by way of a Writ Petition under Article 226 of the Constitution of India, without exhausting the remedy available under section 17 of the SARFAESI Act, we are not inclined to entertain the Writ Petition. Accordingly, the Writ Petition is dismissed. It is open to the petitioner to challenge the impugned order dated 31.08.2018 before the Debts Recovery Tribunal in accordance with law. No costs. Consequently, the connected miscellaneous petitions closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The District Collector cum
District Magistrate
Collector Office
Coimbatore - 641 018

2. The Branch Manager
Standard chartered Bank
509, Red Rose Plaza
D.B. Road, R.S. Puram
Coimbatore - 641 002

+1cc to the Government Pleader, S.R.No.73452

W.P.No.27970 of 2018 and
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ssv(Co)
cs/13/11/2018