

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAIWAMY

W.P. Nos.28292 & 28312 of 2018 and
W.M.P.Nos.32996 & 33014 of 2018

S.Sanmugaraj ... Petitioner in W.P.No.28292/2018

G.Murugan ... Petitioner in W.P.No.28312/2018

Vs.

1.The Authorized Officer,
Hinduja Leyland Finance Ltd.,
No.27A, Developed Industrial Estate,
Guindy, Chennai - 600 032.

2.Kandasamy Ramapani ... Respondents in both W.Ps

Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of mandamus forbearing the respondents their men, agents, representatives, assignees or any other person claiming under them from dispossessing the petitioners herein from their shops "Seethalakshmi Stores" and "Raja Shop Inn" respectively which are carried on at No.46, Abbu Sali Street, Saligramam, Chennai - 93 pursuant to the possession notice dated 24.07.2018 issued by the 1st respondent under Section 13(4) of the SARFAESI Act, 2002.

For Petitioners : Mr.T.S.Baskaran
(in both W.Ps)

For Respondents : Mrs.K.Bhuvaneswari
(in both W.Ps) for Mr.V.Balasubramani (R1)

R2 - no appearance

C O M M O N O R D E R

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

Since the subject matter in both the Writ Petitions are with regard to the possession notice dated 24.07.2018 issued by the 1st respondent, the Writ Petitions are disposed of by this common order.

2.The petitioners have filed the above Writ Petitions to issue Writs of mandamus forbearing the respondents from dispossessing the petitioners from their respective shops at No.46, Abbu Sali Street, Saligramam, Chennai- 600 093.

3.The petitioners have filed the Writ Petitions forbearing the respondents from dispossessing them from their shops pursuant to the possession notice dated 24.07.2018. Admittedly, the 1st respondent has issued the possession notice under Section 13(4) of the SARFAESI Act on 24.07.2018. However, the petitioners without challenging the possession notice before the Debts Recovery Tribunal, have filed the above Writ Petitions under Article 226 of the Constitution of India.

4.1.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.

4.2.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.

5.Since the petitioners have filed the Writ Petitions without exhausting the alternative remedy by way of an appeal under Section 17 of the SARFAESI Act, the Writ Petitions cannot be entertained. The ratio laid down by the Hon'ble Supreme Court

in the above referred judgments squarely applies to the present case. In view of the same, the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

va

To

1.The Authorized Officer,
Hinduja Leyland Finance Ltd.,
No.27A, Development Industrial Estate,
Guindy, Chennai - 600 032.

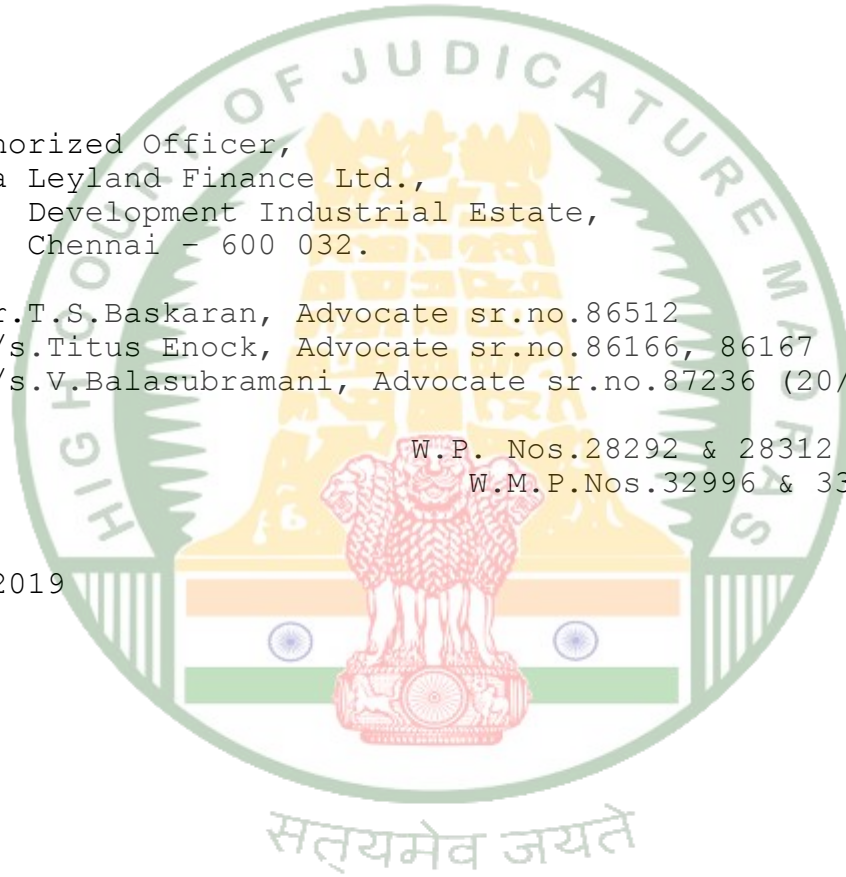
+2cc to Mr.T.S.Baskaran, Advocate sr.no.86512

+2cc to M/s.Titus Enock, Advocate sr.no.86166, 86167

+1cc to M/s.V.Balasubramani, Advocate sr.no.87236 (20/02/2019)

W.P. Nos.28292 & 28312 of 2018 and
W.M.P.Nos.32996 & 33014 of 2018

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