

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.30052 of 2018 and
W.M.P.Nos.35068 & 35069 of 2018

Sampathkumar

... Petitioner

v.

Chief Manager/Authorised Officer
Lakshmi Vilas Bank Regional Office
No.9/4, Advaita Ashram Road
Salem

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, to call for the records of the auctions sale notice of the respondent dated 06.10.2018 regarding the property situated in S.F.No.250/4A, Plot Nos.20 and 21, Attur Taluk, Attur Sub-Registration District, Salem District and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : Mr.T.Elumalai

O R D E R

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

The petitioner has filed the above writ petition to issue a Writ of Certiorari to call for the records of the auctions sale notice of the respondent dated 06.10.2018 and to quash the same.

2. The petitioner has filed the Writ Petition without exhausting the alternate remedy by way of an appeal under section 17 of the SARFAESI Act before the Debts Recovery Tribunal.

3.1. 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.

3.2 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.

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

5. Since the petitioner has filed the Writ Petition without exhausting the alternate remedy available to him before the Debts Recovery Tribunal, the Writ Petition is liable to be rejected. Accordingly, the same is dismissed. However, it is open to the petitioner to challenge the auctions sale notice dated 06.10.2018 before the Debts Recovery Tribunal, in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

Rj

To

1. The Chief Manager/Authorised Officer
Lakshmi Vilas Bank Regional Office
No.9/4, Advaita Ashram Road
Salem

+lcc to Mr.T.Elumalai, Advocate, S.R.No.79070

W.P. No.30052 of 2018 and
W.M.P.Nos.35068 & 35069 of 2018

RV(CO)

SSM(04/12/2018)