

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.31680 of 2018 and
W.M.P.Nos.36922 & 36923 of 2018

M.Jaya

.. Petitioner

v.

1 M/s.Bajaj Finance Limited
Represented by its Authorised Officer
No.804-806 , 8th Floor, Delta Wing
Raheja Towers, 177, Anna Salai
Chennai 600002

2 The Chief Metropolitan Magistrate
Allikulam, Chennai 600003

3 The Station House office
J-13, Velachery Police Station
Chennai 600 042

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records culminating in the Impugned Notice dated NIL issued by the first respondent claiming to have taken physical possession of my property being land and building bearing Old Door No. 11, New Door No.28, Raja Street, Gandhi Road, Velacherry, Chennai 600042, land measuring an extent of 4620 sq.feet and comprised in Survey No.1/1, T.S.No.80, Block No.25 of Velachery Village, Mambalam Guindy Taluk, Chennai, quash the same and consequently direct the respondents not to interfere in any manner with the petitioner's peaceful enjoyment and possession of the said property.

For Petitioner : Mr.Om Prakash, Senior Counsel
for Mr.S.Thiruvengadam

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 Mandamus to call for the records culminating in the impugned notice dated NIL issued by the first respondent claiming to have taken physical possession of the property bearing Old Door No.11, New Door No.28, Raja Street, Gandhi Road, Velacherry, Chennai, measuring an extent of 4620 sq.feet, comprised in Survey No.1/1, T.S.No.80, Block No.25 of Velachary Village, Mambalam Guindy Taluk, Chennai, to quash the same and consequently direct the respondents not to interfere in any manner with the petitioner's peaceful enjoyment and possession of the said property.

2. According to the petitioner, she is the owner of the above mentioned property and one Jithan Shah and his wife Bharati J.Shaw, fraudulently got the sale deed executed in their favour and subsequently mortgaged the same with the 1st respondent. According to the petitioner, on realizing that the 1st respondent agreed to sell the property for 2.5 crores and entered into a Memorandum Of Understanding [MOU] on 06.11.2017 by receiving Rs.10,00,000/- and the same was subsequently extended on 21.11.2017 by receiving a further sum of Rs.10,00,000/-, in all, received Rs.37,00,000/-. Further, the petitioner contended that in spite of the knowledge of the MOU, the petitioner proceeded under the SARFAESI Act and issued a possession notice on 10.07.2017. Further, the petitioner contended that on 06.08.2018, the 1st respondent also obtained an order for taking possession of the property from the Chief Metropolitan Magistrate, Chennai.

3. When the petitioner's property has been mortgaged with the 1st respondent-bank and that the 1st respondent is proceeding against the said property under the SARFAESI Act, the petitioner being the aggrieved party, can challenge the same only before the Debts Recovery Tribunal under section 17 of the SARFAESI Act. The filing of the present Writ Petition, without exhausting the alternative remedy is erroneous.

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. In view of the ratio laid down by the Hon'ble Apex Court in the above referred judgments, we are not inclined to entertain the Writ Petition. Accordingly, the same Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Rj

To

1 The Chief Metropolitan Magistrate
Allikulam, Chennai 600003

2 The Station House office
J-13, Velachery Police Station
Chennai 600 042

+1cc to Mr.S.Thiruvengadam, Advocate, S.R.No.83448

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CP(Co)
CS/08/01/2019