

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.30922 of 2018 and

W.M.P.No.36070 of 2018

Marutham Steel Rolling Mills Private Limited,
16/A, Lakshmipuram, Ganapathy,
Coimbatore - 641 006
rep by its Director
Kathiresan Maruthanayagam

.. Petitioner

Vs.

Indian Overseas Bank,
Gandhipuram Branch,
No.11/953, Cross Cut Road,
Gandhipuram, Coimbatore,
Tamil Nadu - 641 012.

... Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records of the notice of the respondent dated 03.11.2018 issued under Rule 8(6) and 9(1) of the Security Interest (Enforcement) Rules, 2002 insofar as it concerns the properties of the petitioner herein and quash the same.

For Petitioner : Mr.R.Sankara Narayanan, Senior Counsel
for Ms.Archana Iyer

For Respondent : Mr.Rajendran Raghavan

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 notice of the respondent dated 03.11.2018 issued under Rule 8(6) and 9(1) of the Security Interest (Enforcement) Rules, 2002 insofar as it concerns the properties of the petitioner and to quash the same.

2.Admittedly, the petitioner has filed the Writ Petition challenging the Auction Sale Notice dated 03.11.2018 without

approaching the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

3.It is the case of the petitioner that they approached the respondent - Bank to avail loan and other Credit Facilities for Working Capital purposes and mortgaged and hypothecated properties of the Company as well as that of the guarantors. Since the petitioner committed default in repaying the loan amount, the petitioner's accounts were declared to be Non Performing Assets. On 26.07.2014, the respondent issued a demand notice claiming a sum of Rs.33,24,56,301/- along with further interest. Thereafter, the respondent also issued a possession notice and took possession of the properties mortgaged with them on 27.02.2015. Aggrieved over the same, the petitioner preferred appeals in S.A.Nos.78 & 79 of 2015. The respondent issued a demand notice dated 23.02.2017 stating that the petitioner was in default under Section 7 of the Insolvency and Bankruptcy Code, 2016. The petitioner's properties were brought to sale by the respondent - Bank on 25.05.2015 and 13.08.2018. However, the sale was not concluded on the said dates. Subsequently, the petitioner was served with Auction Sale notice dated 18.07.2018 and the Debts Recovery Tribunal granted a conditional stay on 10.08.2018. However, the petitioner has not complied with the conditional order passed by the Debts Recovery Tribunal.

4.Further, it is the case of the petitioner that on 28.08.2018, the petitioner filed an application in C.P.No.1111 of 2018 under Section 10 of the Code before the National Company Law Tribunal at Chennai for initiating corporate insolvency resolution process. The petitioner also filed an Interlocutory Application in M.A.No.475 of 2018 to restrain the respondent - Bank from in any manner alienating, encumbering or creating 3rd party rights in respect of the property measuring 11.10 acres situated at S.F.No.421, Panapatti Village, Kinathukadavu Taluk, Pollachi, Coimbatore District.

5.The learned senior counsel appearing for the petitioner submitted that since the applications filed under Section 10 of the Code is pending before the National Company Law Tribunal, Chennai, the respondent - Bank should not have proceeded with the SARFAESI proceedings against the petitioner.

5.1.In support of his contention, the learned senior counsel relied upon a judgment reported in 2017 SCC Online SC 1025 [M/s.Innoventive Industries Ltd., Vs. ICICI Bank & Anr.].

6.In the said judgment, the Hon'ble Supreme Court dealt with various provisions of Bankruptcy Code. But the provisions of the SARFAESI Act have not been dealt with in the said judgment. Since the maintainability of the Writ Petition without

exhausting the alternative remedy has been specifically dealt with in the judgments referred in 2018 (3) Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.]; 2018 (1) Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others] and ICICI Bank Limited v. Umakanta Mohapatra, Civil Appeal Nos.10251 - 10265 of 2018 dated 05.10.2018, the judgment relied upon by the learned senior counsel for the petitioner is not helpful to the petitioner's case.

7. When the petitioner is challenging the sale notice issued by the respondent on 03.11.2018, they should have challenged the same only before the Debts Recovery Tribunal and not directly by way of a Writ Petition under Article 226 of the Constitution of India. If the aggrieved party directly files a Writ Petition without exhausting the alternative remedy available to them, the Writ Petition is not maintainable.

8. 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.

8.1. 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.

9. The ratio laid down by the Hon'ble Supreme Court squarely applies to the present case.

10. Following the ratio laid down by the Apex Court, we are not inclined to entertain the Writ Petition. Accordingly, the

same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

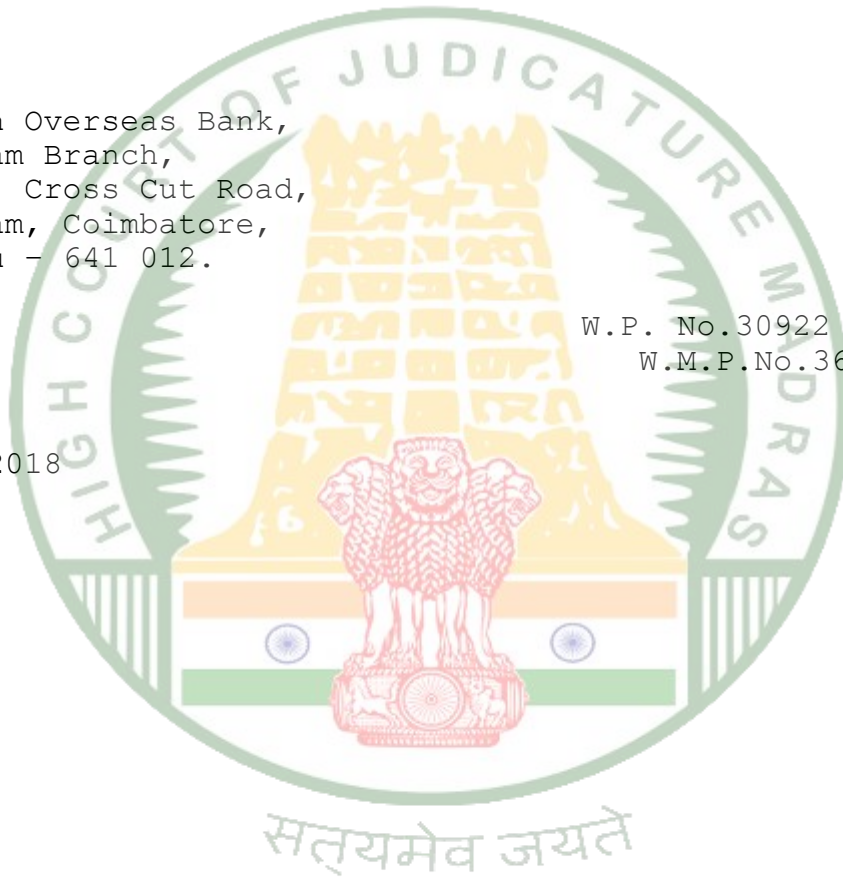
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To

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