

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.32052 of 2018 and

W.M.P.No.37299 of 2018

Shri.K.Paramasivam

... Petitioner

v.

- 1 The Authorized Officer
State Bank of India
Stressed Assets Management Branch
1112, Raja Plaza, Avinashi Road
Coimbatore - 641 037.
- 2 State Bank of India
Rep. by its Branch Manager
Commercial Branch
No.45, Sathy Road
Erode-638 003
- 3 The Liquidator
Shri.R.Raghavendran
M/s. Sri Maharaja Oil
Imports and Exports India (P) Ltd.
Flat No. 3 Dhruvatara Apartments
No.241 Dr. Rajendra Prasad Road
Tadabad, Coimbatore - 641 012
- 4 Debts Recovery Tribunal - Coimbatore
Rep. by its Registrar
Ex- Services Centre
Jawans Bhawan, 2nd and 3rd Floor
27, Travellers Bungalow Road
Coimbatore 641 018.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the records relating to the order dated 27.10.2018 passed by the Debts Recovery Tribunal, Coimbatore 4th respondent herein I.A.No.2707 of 2018 in S.A.No.429 of 2018 and quash the same.

For Petitioner : Mr.V.Raghavachari
for Mr.C.Surana

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 relating to the order dated 27.10.2018 on the file of the Debts Recovery Tribunal, Coimbatore made in I.A.No.2707 of 2018 in S.A.No.429 of 2018 and to quash the same.

2. The petitioner has challenged the order passed by the Debts Recovery Tribunal, Coimbatore in I.A.No.2707 of 2018 in S.A.No.429 of 2018.

3. The petitioner has filed the above Writ Petition without exhausting the appeal remedy available to him under section 18 of the SARFAESI Act before the Debt Recovery Appellate Tribunal.

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 petitioner has filed the Writ Petition without exhausting the appeal remedy, following the ratio laid down by the Hon'ble Apex Court in the above referred judgments, we are not inclined to entertain the Writ Petition.

6. The learned counsel appearing for the petitioner submitted that the respondent-bank has issued the auction notice dated 02.11.2018 for auctioning the property on 10.12.2018 from 10.00 a.m. by e-auction and that a liberty may be given to the petitioner to challenge the same before the Debts Recovery Tribunal.

7. In view of the submission made by the learned counsel for the petitioner, it is open to the petitioner to challenge the e-auction sale notice dated 02.11.2018, in accordance with law, before the Debts Recovery Tribunal.

With these observations, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

1 The Authorized Officer
State Bank of India
Stressed Assets Management Branch
1112, Raja Plaza, Avinashi Road
Coimbatore - 641 037.

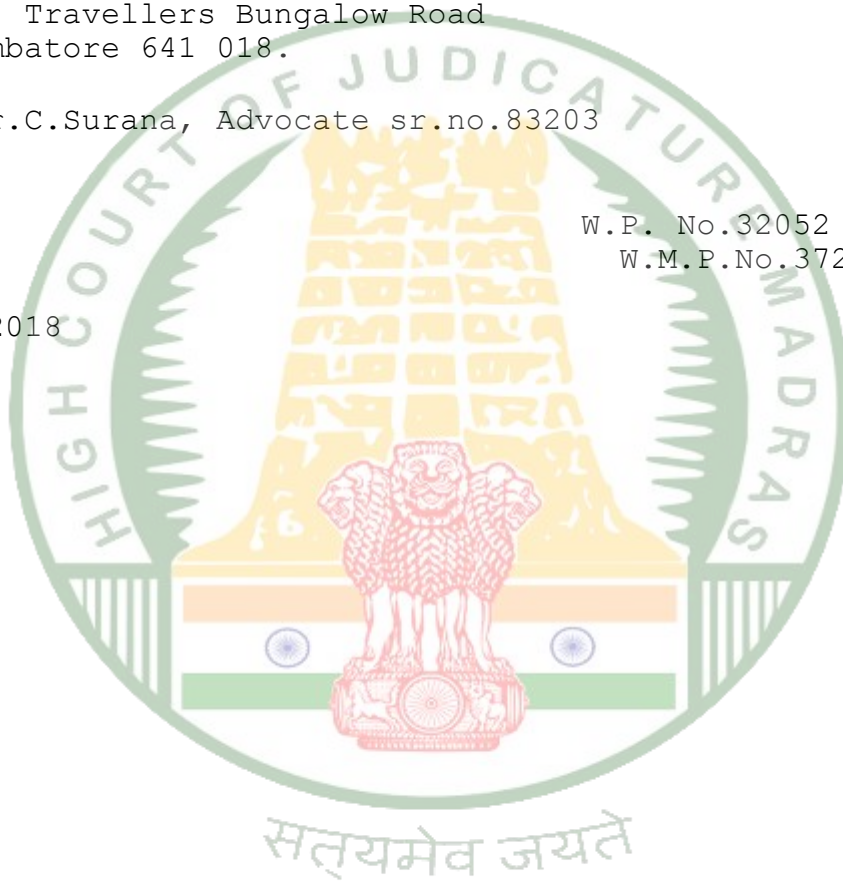
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+1cc to Mr.C.Surana, Advocate sr.no.83203

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nr 20/12/2018



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