

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.32546 of 2018 and

W.M.P.No.37750 of 2018

V.Natarajan

... Petitioner

Vs.

1.The Authorized Officer,
State Bank of India,
Stressed Assets Recovery Branch,
Red Cross Building,
32, Montieth Road,
Egmore, Chennai - 8.

2.The Chief Manager,
State Bank of India,
Small Medium Enterprises (SME) Branch,
Kamarajar Salai,
Puducherry.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari calling for the records to the Sale notice for sale of immovable properties dated 20.11.2018 and auctioning the land and factory building of rice mill at R.S.No.240/5, plant and machinery on 28.12.2018 time 12 noon to 1 pm passed by the 1st respondent and quash the same.

For Petitioner : Mr.R.Chandrasekaran

O R D E R

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

The above Writ Petition has been filed by the petitioner to issue a Writ of certiorari calling for the records to the Sale notice for sale of immovable properties dated 20.11.2018 and auctioning the land and factory building of rice mill at R.S.No.240/5, plant and machinery on 28.12.2018 issued by the 1st respondent and to quash the same.

2.The petitioner has filed the Writ Petition challenging the sale notice dated 20.11.2018 without exhausting the efficacious alternative remedy available to him under Section 17 of the SARFAESI Act.

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 alternative remedy available to him before the Debts Recovery Tribunal, we are not inclined to entertain the Writ Petition. Accordingly, the same is dismissed. However, it is open to the petitioner to challenge the sale notice dated 20.11.2018 in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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srg 04/01/2019



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