

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.32065 of 2018 and
W.M.P.Nos.37316 & 37317 of 2018

M/s.Megawin Leather India Private Limited
Rep by its Managing Director
A.Mohanapriya
No 323/12, Bhavani Main Road
Chunnambu Odai, R.N.Pudur Post
Erode-638005 .. Petitioner

v.

M/s. State Bank of India
Represented by its Assistant General Manager
And Authorised Officer
Small and Medium Enterprises Branch (13241)
No.39, Prasanth Real Gold Tower 6th Floor
North Usman Road, T.Nagar
Chennai - 600 017 .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, to call for records on the file of the respondent in relation to the notice dated 29-11-2018 issued under Sec 13(4) of the SARFAESI 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 records on the file of the respondent in relation to the notice dated 29.11.2018 issued under Section 13(4) of the SARFAESI and to quash the same.

2. In this Writ Petition, the petitioner has challenged Section 13(4) notice dated 29.11.2018 without exhausting the alternate remedy available to them 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. Since the petitioner has filed the Writ Petition without exhausting the alternative remedy available to them under section 17 of the SARFAESI Act, 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. Accordingly, the same Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

Rj

+1cc to Mr.S.C.Saranya, Advocate, S.R.No. 83204

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GN(18/12/2018)