

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.32574 of 2018 and

W.M.P.No.37771 of 2018

K.P.Kavin

... Petitioner

Vs.

- 1.The District Collector,
Collectorate, Namakkal.
- 2.The District Registrar,
District Registrar Office,
Namakkal.
- 3.The Tahsildar,
Taluk Office, Rasipuram Taluk,
Namakkal District.
- 4.The Sub Registrar,
Sub Registrar Office,
Rasipuram Taluk,
Namakkal District.
- 5.The Authorized Officer,
Canara Bank, Rasipuram Branch,
Namakkal District.
- 6.The Branch Manager,
Canara Bank, Rasipuram Branch,
Namakkal District.

7.K.Palanivel

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of mandamus directing the respondents 1 to 4 not to permit the respondents 5 & 6 to conduct illegal public auction scheduled to be conducted on 10.12.2018 published in notice dated 08.11.2018 which is published in Daily Thanthi Newspaper.

For Petitioner : Mr.A.Rajakumar

For Respondents : Mr.V.Jayaprakash Narayanan,
Government Pleader (i/c) R1 & R3

Mr.T.M.Pappiah,
Special Government Pleader (R2 & R4)

O R D E R

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

The above Writ Petition has been filed by the petitioner to issue a Writ of mandamus directing the respondents 1 to 4 not to permit the respondents 5 & 6 to conduct illegal public auction scheduled to be conducted on 10.12.2018 published in notice dated 08.11.2018.

2.The 5th respondent issued a sale notice dated 08.11.2018, which is being challenged in this Writ Petition. The Writ Petition has been filed by the petitioner without exhausting the 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.In view of the ratio laid down by the Hon'ble Supreme Court, the filing of the Writ Petition without exhausting the alternative remedy available under Section 17 of the SARFARSI is not maintainable. In these circumstances, 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(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Collector,
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- 4.The Sub Registrar,
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Namakkal District.
- 5.The Authorized Officer,
Canara Bank, Rasipuram Branch,
Namakkal District.

6.The Branch Manager,
Canara Bank, Rasipuram Branch,
Namakkal District.

+1cc to Mr.A.Rajakumar, Advocate Sr.84348
+1cc to the Government Pleader Sr.85056

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srg 02/01/2019