BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

AND

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

C.R.P(PD)(MD)No.139 of 2018

and

C.M.P(MD)No.589 of 2018

1.M/s.Vaikash Exims,
by Proprietor,
K.K.Kumarapandian,
1/165, Kathirvel Nagar,
Rajiv Nagar Extension West,
Tuticorin - 628 008.

2.K.Kasini Meenakshi ... Petitioners

Vs.

The Authorized Officer,
Indian Bank,
Melur Branch,
Tuticorin - 628 003. ... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India, against the order dated 20.12.2017 passed in I.A.No.2066 of 2017 in S.A.No.408 of 2017 on the file of the Debts Recovery Tribunal, Madurai.

For Petitioners : Mr.R.R.Kannan

For Respondent : Mr.C.Jawahar Ravindran

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ORDER

[Order of the Court was made by M.DURAISWAMY,J.]

Challenging the order passed in I.A.No.2066 of 2017 in S.A.No.408 of 2017 on the file of the Debts Recovery Tribunal, Madurai, the petitioners have filed the above Civil Revision Petition under Article 227 of the Constitution of India.

2. By order dated 20.12.2017, the Debts Recovery Tribunal, Madurai, granted an order of interim stay on condition that the petitioners shall make payment of a sum of Rs.6,03,000/- (Rupees Six Lakhs and Three Thousand only) in two equal installments. Further, the Debts Recovery Tribunal had clarified that in the event of the

petitioners failing to comply with the conditional order, the interim stay granted by the Tribunal shall stand vacated automatically. Challenging the said order, the petitioners have filed the above Civil Revision Petition.

3. The learned Counsel for the petitioners made his submission with regard to the merits of the proceedings pending before the Debts Recovery Tribunal.

4. When the challenge is made only with regard to the conditional order passed by the Debts Recovery Tribunal, there is no necessity for this Court to go into the merits of the proceedings pending before the Debts Recovery Tribunal. That apart, as against the order passed by the Debts Recovery Tribunal, Madurai, the petitioners have got a remedy by way of appeal to the appellate Tribunal under Section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Without exhausting the appeal remedy, the petitioners have filed the above Civil Revision Petition. That apart, the Debts Recovery Tribunal had considered the case off the petitioners and passed the conditional order which cannot be interfered with in this Civil Revision Petition.

5. The learned Counsel for the respondent relied upon the judgment in *Agarwal Tracom Pvt. Ltd., v. Punjab National Bank and others* reported in *CDJ 2017 SC 1285*, wherein the Honourable Apex Court held as follows:

> "43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.
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> 44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the

> five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution”

The *ratio* laid down by the Honourable Apex Court squarely applies to the facts and circumstances of the present case.

6. Following the said *ratio*, we are of the considered view that the Civil Revision Petition is liable to be rejected.

7. Accordingly, this Civil Revision Petition is dismissed. However, it is open to the petitioners to approach the Debts Recovery Appellate Tribunal and file appeal against the impugned order in accordance with law. No costs. Consequently, the connected civil miscellaneous petition is also dismissed.

Sd/
Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

+1cc to Mr.C.Jawahar Ravindran, Advocate, SR.No. 59461
+1cc to Mr.R.R.Kannan, Advocate, SR.No. 59629

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