



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.05.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.[MD].No.10718 of 2018

and

W.M.P.[MD].Nos.9812 and 9813 of 2018

T.Durairaj : Petitioner

Vs.

1.The Authorized Officer,
Tamilnad Mercantile Bank Ltd.,
Therekalpudur Branch
K1 Block 11 & 12 Apta Complex, Apta Nagar
Nellai Road, Therekalpudhur, Nagercoil,
Kanyakumari District.

2.B.Mallikavathi

3.D.Balakrishnan : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent's auction sale notice published in the Daily Thanthi tamil newspaper dated 27.04.2018 and quash the same as without jurisdiction and consequently directing the respondents not to interfere in the ownership and the peaceful possession of the petitioner in the notice mentioned schedule property.

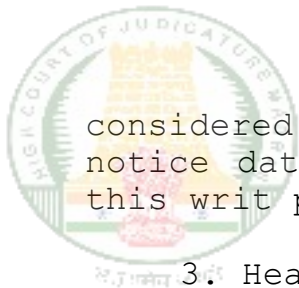
For Petitioner : Mr.H.Velavadhas

O R D E R

[Order of the Court was made by G.R.SWAMINATHAN, J]

The property in question is the subject matter of proceedings initiated by the first respondent in SARFAESI Act.

2. According to the petitioner, the proceedings initiated by the first respondent are null and void. He, therefore, filed SA SR No.12640/2017 before the Debts Recovery Tribunal, at Madurai. By order dated 13.03.2018, the said SA SR No.12640/2017 stood rejected by the Tribunal. The Tribunal observed that the petitioner herein did not produce any convincing or concrete record to prove his claim over the property in question. It was specifically observed that since he is not the owner of the property in question, he cannot be



considered as an aggrieved person. Thereafter, the impugned sale notice dated 23.04.2018 came to be issued and that is assailed in this writ petition.

3. Heard the learned counsel for the petitioner.

4. The writ petition is liable to be dismissed for more reasons than one.

5. If the writ petitioner is aggrieved by the issuance of the impugned sale notice, his remedy is only before the Debts Recovery Tribunal and the said statutory remedy provided under SARFAESI Act cannot be bypassed by invoking the writ jurisdiction of this Court directly. The Hon'ble Supreme Court in United Bank of India v. Satyawati Tondon's [2010 (8) SCC 110] case has specifically held that the high Court cannot exercise its jurisdiction under Article 226 of the Constitution of India in such matters. That apart as already pointed out the writ petitioner's case was rejected by the Tribunal by order dated 13.03.2018 in SA SR No.12640/2017. The writ petitioner has not challenged the same by filing an appeal before the Debts Recovery Appellate Tribunal. Having failed to do so, he cannot now maintain a writ petition. The writ petition, on the very face of it, is not maintainable. It, therefore, stands dismissed. No costs. Consequently connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Authorized Officer,
Tamilnad Mercantile Bank Ltd.,
Therekalpudur Branch
K1 Block 11 & 12 Apta Complex, Apta Nagar
Nellai Road, Therekalpudhur, Nagercoil,
Kanyakumari District.

ORDER MADE IN
W.P. [MD].No.10718 of 2018
AND WMP No. 9812 and 9813 of 2018
09.05.2018

rr

JM/KKR/SAR 3/16.05.2018/2P/2C