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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND

THE HONOURABLE MRS.JUSTICE R.THARANI
W.P.[MD].No.22374 of 2018

and

W.M.P. (MD) .Nos.20270, 20271 and 21192 of 2018

1.M/s.KMB Marbles & Granites India Private Limited,
Rep by its Managing Director,
Mr.K.Yusuff Basha,
No.4/59, Bharathi Street,
Swarnapuri, Salem 636 004.

2.M/s.KMB Granite Enterprises Private Limited,
Rep by its Managing Director,
Mr.K.Yusuff Basha,
No.4/59, Bharathi Street,
Swarnapuri, Salem 636 004.

: Petitioners

Vs.

1.The Authorized Officer,
State Bank of India,
Stressed Assets Management Branch,
1112, Raja Plaza, Avinashi Road,
Coimbatore 641 037.

2.State Bank of India,
Rep by its Branch Manager,
Salem Branch,
[Earlier in the name of State Bank of Travancore],
No.9, Rajaji Road, Hasthampatty Post,
Salem 636 007.

3.K.Bhuvanendran

4.Debts Recovery Tribunal - Madurai,
III & IV Floor, Kalyani Towers,
4/162, Madurai - Melur Road,
[Near Meenakshi Mission Hospital],
Uthangudi Post, Madurai 625 107.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the order dated 27.10.2018 passed in I.A.No.2695 of 2018 in S.A.No.545 of 2018, on the file of the fourth respondent and

<https://hcservices.ecourts.gov.in/hcservices/>

quash the same.

For Petitioners

: Mr.Veera Kathiravan



Senior Counsel

For M/s.Vast Law Associates

For Respondent No.1 : Mr.V.Meenakshi Sundaram
Standing Counsel

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O R D E R

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

Challenge in this Writ Petition is to the order dated 27.10.2018 passed in I.A.No.2695 of 2018 in S.A.No.545 of 2018, on the file of the fourth respondent herein.

2. The case of the petitioners is that the first respondent has issued E-Auction Sale Notice dated 05.10.2018, thereby fixing E-Auction on 25.10.2018, which was challenged by the petitioner by filing S.A.No.545 of 2018 before the Debts Recovery Tribunal, Madurai. Along with the said application, the petitioners filed I.A.No.2695 of 2018 seeking to stay all further proceedings, pursuant to the E-Auction Sale Notice dated 05.10.2018, pending disposal of the main application. The Tribunal, vide order dated 27.10.2018, dismissed the said Interlocutory Application on the ground that the petitioners failed to comply with the conditional order passed by the Tribunal, which is under challenge in this Writ Petition.

3. We have heard the submissions made by the learned Counsel for the parties and perused the materials available on record.

4. Before venturing into the contentions raised by the learned Senior Counsel appearing for the petitioners, we have to necessarily state that when there is an alternative remedy available, the writ petition is not maintainable. In this regard, we may usefully refer to the recent judgment of the Honourable 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, wherein it is held as follows:

"Despite several judgments of this court, including a judgment by Hon'ble Mr.Justice Navin Sinha, as recently as on 30.01.2018, in *Authorized Officer, State Bank of Travancore and Anr., vs. Mathew K.C.*, (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are Non-Performing Assets (NPAs).

The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows:-



18. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd., vs. Prem Heavy Engineering Works (P) Ltd., and Another, (1997) 6 SCC 450, observing:-

"32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

The writ petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside."

5. In view of the recent judgment of the Honourable Supreme Court, we are of the opinion that the present Writ Petition is not maintainable and the appropriate remedy available for the petitioners is to file an appeal before the Debts Recovery Appellate Tribunal and thus, the present Writ Petition fails.

8. In the result, this Writ Petition stands dismissed, however, granting liberty to the petitioners to file appeal before the Debts Recovery Appellate Tribunal in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar(CS-IV)

To
The Judge,
Debts Recovery Tribunal - Madurai,
III & IV Floor, Kalyani Towers,
4/162, Madurai - Melur Road,
[Near Meenakshi Mission Hospital],
Uthangudi Post, Madurai 625 107.

+1cc to M/s.VAST LAW ASSOCIATES, Advocate, SR.No. 96908

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