BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.11.2018
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS. JUSTICE R.THARANI

W.P.(MD)No.22710 of 2018

S.K.Sukumar : Petitioner

Vs.

1. The Authorised Officer,
Dena Bank,
No.95/C Thiruvalluvar Salai
Dindigul.

2. The Senior Manager
Dena Bank
Dindigul Branch
No.95/C Thiruvalluvar Salai
Dindigul District. : Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari to call for the records pertaining to the impugned E-Auction sale notice passed by the 1st respondent in his proceedings in DB/DGL/SARFEASI/SALE/STAR AGRO ADD/2018 dated 17.10.2018 and to quash the same.

For Petitioner : Mr.C.Mayil Vahana Rajendran
For Respondents : Mr.V.Maharajan

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

This Writ Petition has been filed challenging the E-Auction notice dated 17.10.2018 of the first respondent.

2.It is the case of the petitioner that the petitioner is the Managing Trustee of STAR Agro Add, which is involved in distribution of agricultural inputs and implements and for supplying input products of various schemes implemented by the Government. In the year 2015, the petitioner participated in the tender and was declared as successful bidder and the said tender bid was for a sum of Rs.12.20 crores. For the said purpose, the petitioner approached the respondent Bank and availed credit facility and accordingly, he was sanctioned credit facility to the tune of Rs.7.20 crores and the petitioner opened a credit Account bearing No.147713031075. While so, the respondent bank issued E-Auction sale notice dated 17.10.2018 under Section 8(6) of the SARFEASI Act. Challenging the same, the petitioner is before this Court with this petition.

3. When the matter is taken up for hearing, the learned counsel for the respondent Bank has raised a ground as to the maintainability of the writ petition, by placing reliance on 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 and submitted that when there is an alternative remedy available, the writ petition is not maintainable and should not be entertained and hence, prayed for the dismissal of this writ petition.

4. However, the learned Counsel appearing for the petitioner, by way of reply, submitted that when there is a fraud committed on the part of the respondent Bank in conducting the sale of the property in question without serving notice to the petitioner, the same can be questioned by filing the writ petition under Article 226 of the Constitution of India.

5. Heard the submissions of the learned Counsel for the parties and perused the materials available on record.

6. In 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, 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."

7. 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 petitioner is to approach the Debts Recovery Tribunal and thus, the present writ petition fails.

8. In the result, this writ petition stands dismissed, however, granting liberty to the petitioner to approach the Debts Recovery Tribunal in accordance with law. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Authorised Officer,
Dena Bank,
No.95/C Thiruvalluvar Salai
Dindigul.

2. The Senior Manager
Dena Bank
Dindigul Branch
No.95/C Thiruvalluvar Salai
Dindigul District.

3. The Debts Recovery Tribunal,
Madurai.

W.P.(MD)No.22710 of 2018
14.11.2018

RR
ES/SKN/RSK/SAR 2/10.12.2018/3P/4C