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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS. JUSTICE R.THARANI

W.P.(MD)No.22768 of 2018

and

W.M.P.(MD)No.20644 of 2018

Sakthivel

... Petitioner

Vs.

1. The District Collector,
Dindigul District, Dindigul.

2. The Tahsildar,
Dindigul West Taluk,
Dindigul District.

3. The Authorised Officer,
Central Bank of India,
Dindigul.

4. The Branch Manager,
Central Bank of India,
Dindigul Town,
Dindigul.

5. Rajendran

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, forbearing the 1 to 4 respondents, his subordinate, official and men from taking forcible possession of the House situated at Old Door No.H.31, New Door No.H.41, Rani Mangammal Colony, Dindigul Town, Dindigul District, except due process of law contemplated under the Rent Control Act vide representation dated 09.11.2018.

For Petitioner	: Mr.C.Mayilvahana Rajendran
For R1 & R2	: Mr.M.Jeyakumar
	Additional Govt. Pleader
For R3 & R4	: Mr.N.Dilip Kumar

O R D E R

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

The writ petition has been filed for issuance of a writ of Mandamus forbearing the respondents 1 to 4 from taking forcible possession of the house situated at Old Door No.H.31, New Door No.H.41, Rani Mangammal Colony, Dindigul Town, Dindigul District, except under due process of law contemplated under the Rent Control

Act, vide the petitioner's representation dated 09.11.2018.

2. It is the case of the petitioner that the fifth respondent has executed a rental agreement in respect of the house situated at Old Door No.H.31, New Door No.H.41, Rani Mangammal Colony, Dindigul Town, Dindigul District, in favour of the petitioner, on 03.03.2012. The period of rental is four years. The petitioner has been residing in the above said address from 05.03.2012 and he has paid the advance amount of Rs.2,50,000/-. All of a sudden, the third respondent visited the petitioner's house and informed him that the fifth respondent obtained loan from them and failed to pay the dues within the stipulated time. Therefore, the petitioner approached the fifth respondent and asked him to return the advance amount of Rs.2,50,000/-. But the fifth respondent threatened him. Hence, he filed a suit in O.S.No.283 of 2015 before the Principal District Munsif Court, Dindigul, praying to restrain the respondents 1, 2 and 5 from in any way interfering with the peaceful possession and enjoyment of the house rented out by the fifth respondent. The Principal District Munsif Court, Dindigul, by order dated 06.04.2016, granted interim injunction. Subsequently, the fourth respondent filed an interim application in I.A.No.1478 of 2017, seeking rejection of plaint and it was allowed by order dated 15.02.2018. But the same was not communicated to the petitioner by his counsel. Hence, he could not file an appeal against the said order. Later when he came to know about the rejection of plaint by obtaining certified copy from the District Munsif Court, Dindigul, he has filed an appeal and the same was numbered as A.S.SR.No.8285 of 2018 on the file of the Sub Court, Dindigul. Pending the above said appeal, the Officials of the respondents 1 and 2 visited his house and asked him to vacate the premises immediately. Hence, he made a representation on 09.11.2018, to the first respondent and the copy of the same was also marked to the second respondent. But, the same was not considered so far. Therefore, the petitioner has filed the present writ petition to issue a writ of Mandamus forbearing the respondents 1 to 4 from taking forcible possession of the house situated at Old Door No.H.31, New Door No.H.41, Rani Mangammal Colony, Dindigul Town, Dindigul District, except under due process of law contemplated under the Rent Control Act.

3. When the matter is taken up for hearing, the learned counsel for the respondents 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 would submit that once tenancy is created, a tenant can be evicted only after following the due process of law as prescribed under the





provisions of SARFEASI Act as that would amount to stultifying the statutory right of protection given to the tenant.

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

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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, liberty is granted to the petitioner to approach the Debts Recovery Tribunal, Madurai, in accordance with law. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar(CO)

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/True copy/

Sub Assistant Registrar(CS-IV)

To

1. The District Collector,
Dindigul District, Dindigul.

2. The Tahsildar,
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Dindigul District.

3. The Authorised Officer,
Central Bank of India,
Dindigul.

4. The Branch Manager,
Central Bank of India,
Dindigul Town,
Dindigul.

5. The Registrar,
Debts Recovery Tribunal, Madurai.

+1cc to Mr.C.MAYIL VAHANA RAJENDRAN, Advocate, SR.No. 95838

+1cc to Mr.N.DILIPKUMAR, Advocate, SR.No.95666

+1cc to M/s.Special Government Pleader, SR.No. 95377

W.P. (MD) No.22768 of 2018
15.11.2018

AKV

KK/SKN/SAR-4/06.12.2018/4P-9C