BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE R.THARANI

C.R.P(PD)(MD)No.2557 of 2018

and

C.M.P(MD)No.11250 of 2018

M/s.Amutha & Co.,
Rep. by its Patner,
A.L.Ramanathan,
S/o.Karuppiah,
Door No.37, 10th Cross West,
Tillai Nagar,
Tiruchirappalli-620 018. ... Petitioner/Petitioner/Applicant

Vs.

The Authorised Officer,
Fullerton Indian Credit Company Ltd.,
1st, 2nd and 3rd Floors,
Megh Tower,
Old No.307, New No.165,
Poonamallee High Road,
Maduravoyal,
Chennai-600 095. ... Respondent/Respondent/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 27.07.2018 made in I.A.No.1752 of 2018 in S.A.No.351 of 2018 on the file of the Debts Recovery Tribunal, Madurai.

For Petitioner : Mr.C.Jeyaprakash

* * * * *

ORDER

(Order of this Court was made by R.SUBBIAH,J.)

This Civil Revision Petition has been filed challenging the order dated 27.07.2018 made in I.A.No.1752 of 2018 in S.A.No.351 of 2018 on the file of the Debts Recovery Tribunal, Madurai.

2. The petitioner is a private limited company incorported

under the provisions of the Indian Companies Act, 1956 and started the business in the name and style of M/s.Amutha and Co., In the year 2015, the petitioner approached the respondent Company for loan and on 14.12.2015 the respondent Company sanctioned the loan to the petitioner. Accordingly, the petitioner availed credit facilities from the respondent Company. According to the respondent, the petitioner committed defaults and consequently, the account was classified as Non-Performing Asset (NPA) and appropriate proceedings under the SARFAESI Act were initiated against the petitioner. Challenging the same, the petitioner moved the Debts Recovery Tribunal, Madurai, by filing S.A.No.351 of 2018 and an order of conditional interim stay was passed with a default clause in I.A.No.1752 of 2018 on 27.07.2018. Aggrieved by the same, the present Civil Revision Petition has been filed.

3. However, the learned Counsel for the petitioner would submit that the delay in payment of the installments by the petitioner is neither wilful nor wanton and the Debts Recovery Tribunal ought to have taken a lenient view and granted time to pay the other installments and hence, the same can be questioned by filing the revision petition under Article 227 of the Constitution of India.

4. As per the 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, there is an alternative remedy available, this revision petition is not maintainable and should not be entertained.

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 revision petition is not maintainable and the appropriate remedy available for the petitioner is to file appeal before the Debt Recovery Appellate Tribunal and thus, the present revision petition fails.

8. In the result, this Civil Revision Petition stands dismissed, however, granting liberty to the petitioner to file appeal before the Debt Recovery Appellate Tribunal in accordance with law. No costs. Consequently, the connected civil miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To
The Debts Recovery Tribunal, Madurai.

- 1 CC TO Mr.K.M.KARUNAKARAN , ADVOCATE IN SR No.95694.
- AM
- DS RSK SAR1 29 11 2018 3P 3C

C.R.P(PD)(MD)No.2557 of 2018

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