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
W.P(MD)No.22939 of 2018
and
W.M.P(MD)Nos.20833 & 20834 of 2018

Mohammed Rafeek ... Petitioner

Vs.

1. The District Collector,
   Trichirapalli District,
   Trichirappalli.

2. The Authorized Officer,
   Axis Bank, Loan Centre,
   Kodambakkam,
   Chennai-600 024.

3. The Branch Manager,
   Axis Bank,
   11th Cross, Thillai Nagar,
   Trichirapalli. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records pertaining to impugned notice in Na.Ka.G5/8231/2017 proceedings, dated 15.10.2018 issued by the 1st respondent and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.S.A.Ajmal Khan

For R1 : Mr.M.Jeyakumar
Addl.Government Pleader

For R2 : Mr.M.Senthil Kumar

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ORDER

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

This writ petition has been filed seeking a writ of Certiorari to call for the records pertaining to the impugned notice in Na.Ka.G5/8231/2017 proceedings, dated 15.10.2018 issued by the 1st respondent and quash the same as illegal.

2. Facts-in-nutshell leading to the filing of this writ petition, briefly stated, are as follows:

2.1. The third respondent bank sanctioned a housing loan for an amount of Rs.31,34,813/- on 21.11.2011. The said loan was sanctioned in the name of the petitioner. The petitioner's immovable property was given as a security. The loan amount has to be repaid in 175 monthly installments at the rate of Rs.35,630/- per month. The petitioner was very prompt in repaying the loan amount and suddenly, due to heavy loss in the petitioner's Company, the subsequent loan amount has not been paid in time. Thereafter, the bank has also instructed the petitioner to pay the entire loan amount. Thereafter, the second respondent issued a possession notice under Rule 8(1) of the SARFAESI Act on 23.01.2017. Hence, the third respondent bank issued a letter, dated 24.07.2017 mentioning the outstanding amount as on 31.05.2017 as Rs.29,52,047/-. The petitioner has also received the enquiry notice from the District Collector, Trichy on 16.02.2018 stating that the respondent bank made an application to the District Collector, Trichy for taking possession of the mortgaged property under Section 14 of the SARFAESI Act. After receiving the notice, the petitioner appeared before the first respondent District Collector and submitted all the relevant particulars. The petitioner requested the third respondent bank to give some breathing time for settling the housing loan. During the course of the District Collector's enquiry, the respondent bank instructed the petitioner to pay some amount and under such circumstances, they will consider the case. The petitioner is ready to settle the loan amount and he seeks some time to mobilize the fund. On 23.06.2018, the petitioner paid a sum of Rs.4,34,031/- to the first respondent through the third respondent bank and after receiving the amount, the first respondent issued the impugned notice, dated 15.10.2018 stating that as per the second respondent's representation, they want to take physical possession as per Section 14 of the SARFAESI Act. Challenging the same, the present writ petition came to be filed.

3. When the matter is taken up for hearing, Mr.M.Senthil Kumar, the learned counsel appearing for the second respondent has raised a ground as to the maintainability of the writ petition as against the order passed by the Debt Recovery Tribunal, Madurai, 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, Mr.S.A.Ajmal Khan, learned Counsel appearing for the petitioner, by way of reply, submitted that the respondents 2 & 3 have not complied with the conditions contemplated under the SARFAESI Act and since they have not published the impugned proceedings in Tamil and English daily, 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."*
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> 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 file appeal before the Debt Recovery Appellate Tribunal and thus, the present writ petition fails.

8. In the result, this writ 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, connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The District Collector,
Trichirapalli District,
Trichirappalli.

+1cc to Mr.M.Senthil Kumar, Advocate Sr.No.96095

AM

KM/SV/SAR2/12.12.2018/4P/3C

W.P(MD)No.22939 of 2018
16.11.2018