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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.11.2018

DELIVERED ON : 30.11.2018

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.P (MD) No.21167 of 2018
and
W.M.P (MD) Nos.19007 and 19008 of 2018

Amutha Sweets Bakery and Snacks Parks,
represented by its
Proprietor,
D.Kamaraj

... Petitioner

Vs.

1.The Registrar,
Debts Recovery Tribunal,
Madurai Bench,
Kalyani Towers,
Ring Road,
Madurai.

2.The Authorised Officer,
Tamilnad Mercantile Bank,
No.1, Toll Gate, Bikshandarkoil,
Mannachanallur Taluk,
Trichy District.

3.Senthilkumar

4.The Sub Registrar,
Mannachanallur Sub Registrar Office,
Trichy District.

... 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 of the second respondent regarding the sale confirmation, vide proceedings bearing No.Nil, dated 31.07.2018 relating to the sale of the petitioner's mortgaged property in favour of the third respondent and registration of sale document with the fourth respondent and quash the same as illegal and arbitrary.

<https://hcservices.ecourts.gov.in/hcservices/>
For Petitioner
For Respondents

: Mr.S.Siva Ilayaraja
: Mr.Pala.Ramasamy
for R.1 & R.2



Mr.D.Sadiq Raja for R.3
Mr.M.Murugan
Government Advocate for R.4

ORDER

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Seeking a writ of Certiorari to call for the records of the second respondent regarding the sale confirmation, vide proceedings bearing No.Nil, dated 31.07.2018 relating to the sale of the petitioner's mortgaged property in favour of the third respondent and registration of sale document with the fourth respondent and quash the same as illegal and arbitrary, the petitioner has come before this Court.

2. Nutshell facts necessary for the disposal of this writ petition, are stated hereunder:

2.1. The petitioner availed a term loan of Rs.15,00,000/- (Rupees Fifteen Lakhs only) and also an Over Draft Loan of Rs.10,00,000/- (Rupees Ten Lakhs only), totalling a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) from the second respondent bank in the year 2016 for establishing an eatery, namely, Amutha Sweets Bakery and Snacks Parks at No.3748, Sakthi Ganapathy Complex, Trichy - Chennai Main Road, No.1, Toll Gate, Bikshandarkoil, Mannachanallur Taluk, Trichy District.

2.2. The second respondent bank asked the petitioner to create a mortgage in respect of his property measuring 2,520 sq. ft., which consists two buildings worth about Rs.2 Crores and accordingly, the petitioner gave the said property as a common security for another loan account which stood in the name of Amutha Super Market. After availing the said loan, the petitioner constructed a building measuring 1,500 sq. ft., out of the said 2,520 sq. ft., at the cost of Rs.40,00,000/- (Rupees Forty Lakhs only).

2.3. Though the petitioner was regular in repayment of the loan, there was a default in repayment of the loan amount and the second respondent initiated the proceedings under the SARFAESI Act and hence, the petitioner moved the first respondent - Tribunal by filing S.A.No.293 of 2018 and also I.A.No.1457 of 2018 seeking an order of interim stay. The Tribunal, by order dated 19.06.2018, granted an order of conditional stay not to confirm the sale till 30.08.2018, subject to certain conditions, directing the petitioner to pay the outstanding amount due and payable in three installments, however, with a default clause. Though the petitioner paid the first installment, there was a delay in paying the second installment and hence, the second respondent bank refused to receive the same. Hence, the petitioner filed I.A.No.1939 of 2018 before the Tribunal seeking to accept the delayed payment of second installment. However, the Tribunal dismissed the said Interlocutory Application. Hereafter, the second respondent bank confirmed the auction sale in favour of third respondent and issued a sale certificate on



31.07.2018 and also communicated the same to the petitioner vide impugned proceedings dated 31.08.2018. Hence, the present writ petition has been filed.

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

4. 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:

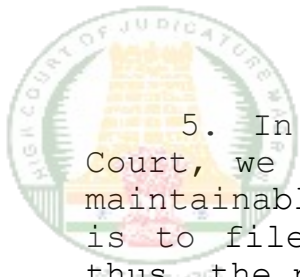
"Despite several judgments of this court, including a judgment by Hon'ble Mr. Justice Navin Sinha, as recently as on 30.01.2018, in Authorized Officer, State Bank of Travancore and Anr., vs. Mathew K.C., (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under Securitisation and 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."



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 petitioner is to file appeal before the Debt Recovery Appellate Tribunal and thus, the present writ petition fails.

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6. 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, the connected writ miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar(cs-IV)

To

1.The Registrar,
Debts Recovery Tribunal,
Madurai Bench,
Kalyani Towers,
Ring Road,
Madurai.

2.The Sub Registrar,
Mannachanallur Sub Registrar Office,
Trichy District.

+1cc to Mr.D.Sadiq Raja Advocate in SR.No.98065
+1cc to Mr.Pala.Ramasamy Advocate in SR.No.97838
+1cc to Mr.S.Siva Ilayaraja Advocate in SR.No.97989
+1cc to Special Government Pleader, SR.No.98258

PRE-DELIVERY ORDER MADE IN
W.P(MD)No.21167 of 2018

and

W.M.P(MD)Nos.19007 and 19008 of 2018
30.11.2018

RSB

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