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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.09.2018
CORAM :
THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.19257 of 2018
and
W.M.P(MD)Nos.17096 and 17097 of 2018

Paravathyammal ... Petitioner

Vs.

1. Karur Vysya Bank
   Divisional Office
   16 A.A.Road
   Gnanaolivpuram
   Madurai 6250 16
   Represented by its authorised Officer

2. Sudha ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records on the file of the 1st respondent in the impugned auction sale dated 31.07.2018 published by the 1st respondent in Times of India and the Hindu on 02.08.2018 and quash the same.

For Petitioner : Mr.S.Venkatesh
for Mr.A.Sivaji
For Respondent No.1 : Mr.Pala Ramasamy

ORDER

(Order of the Court was made by T.RAJA, J.)

This Writ Petition has been filed challenging the sale notice issued long time ago, namely, on 31.07.2018, that too, by the tenant.

2. This Court, following the judgment of the Hon'ble Apex Court in the case of Vishal N.Kalsaria v. Bank of India and others [(2016) 3 SCC 762], in Paragraph 6 of its judgment, considering the latest amendment to the SARFAESI Act, 2002 by Act 44 of 2016 dated 12.08.2016, enacting the enforcement of Security Interest and Recovery of Debt Law and Miscellaneous Provisions (Amendment) Act, 2016, made it clear that if any person claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims, shall, for the purpose of enforcement of security interest, have the jurisdiction to examine whether lease or tenency-

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(a) has expired or stood determined; or
(b) is contrary to Section 65A of the Transfer of Property Act, 1882 (4 of 1882); or
(c) is contrary to terms of mortgage; ... etc.

3. Therefore, the petitioner, claiming right of tenancy as per Section 17(4)-A of the SARFAESI Act, should approach only the Debts Recovery Tribunal, to satisfy that his tenancy right in security assets falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (1) of the said Act. Therefore, we are unable to entertain the writ petition, as the said exercise has to be done by the Debts Recovery Tribunal. This Writ Petition fails and the same is dismissed, with liberty to the writ petitioner to approach the Debts Recovery Tribunal. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar(CS-II)

To

The authorised Officer
Karur Vysya Bank
Divisional Office
16 A.A.Road
Gnanaolivpuram
Madurai 6250 16.

+1CC to Mr.A.Sivaji, Advocate, SR.No. 82320

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