



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.19210 of 2018

and

W.M.P (MD) Nos.17044 and 17045 of 2018

Indira

... Petitioner

vs.

1. Karur Vysya Bank
Divisional Office
16 A.A.Road
Gnanolivpuram
Madurai 625 016
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

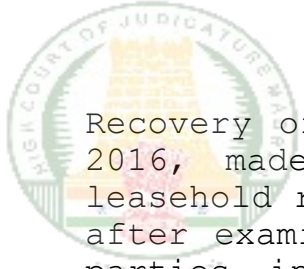
For Respondents : Mr.Pala Ramasamy
for R1

O R D E R

(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 of 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 tenancy-

- (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) of 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 (AE)

/True copy/

Sub Assistant Registrar (CS-II)

+1cc to Mr.A.SIVAJI, Advocate, SR.No.82321

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