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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2018

CORAM :

**THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY**

W.P (MD) No.19926 of 2018

H.Tajudeen

... Petitioner

vs.

The Authorized Officer,
Tamilnad Mercantile Bank Ltd.,
Tiruchirappalli Regional Office,
For Trichy Bikshandarkoil Branch
S.F.No.69/2C Lalgudi Main Road
Menaka Nagar No.1 Toll Gate
Bikshandarkoil
Trichy - 625 002.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus to forbear the respondent from all further proceeding of the sale notice dated 24.08.2018 issued by the respondent under Rule 8(6) and 9(1) of Security Interest (Enforcement) Rules 2002 for a reasonable time period to enable the petitioner to get an appropriate order in S.A.No.244 of 2018 pending on the file of the Hon'ble Debts Recovery Tribunal, Madurai.

For Petitioner	: Mr.V.Santhakumaresan
For Respondents	: Mr.N.Dilipkumar

ORDER

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

This Writ Petition has been filed to forbear the respondent from proceeding further the sale notice dated 24.08.2018 issued under Rule 8(6) and 9(1) of Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as 'the Rules') to enable the petitioner to get an appropriate order in S.A.No.244/2018 pending on the file of the Debts Recovery Tribunal, Madurai.



2. Learned counsel for the petitioner would submit that the petitioner has availed various credit facilities from the respondent Bank to the tune of Rs.79,41,195/- by mortgaging his properties. It is further submitted that the petitioner has also executed necessary documents to the respondent and thereafter regularly paying the amount without any defaults, which is more than the principle and even recently, the petitioner has paid a sum of Rs.3,85,000/- and 5,04,000/- on 16.03.2018. While so, it is contended that the respondent Bank, without appreciating the same, declared the petitioner's account as Non Performing Asset, which is untenable. However when they issued notice under Section 13(2) followed by 13(4) of the SARFAESI Act, the petitioner approached the Debts Recovery Tribunal with S.A.No.244/2018, the same is now posted for hearing on 05.01.2019. In the meanwhile, the respondent has come forward to issue the first sale notice on 10.05.2018 indicating the proposed sale at 4 p.m. on 14.06.2018. Again finding no taker, they were not able to proceed with the first sale notice, hence they issued second sale notice on 23.08.2018 giving only 15 days time to hold public auction at 1.00 p.m. on 19.09.2018, it is contended. In these facts and circumstances, as the petitioner is not having sufficient time to move the Debts Recovery Tribunal, Madurai, he has been advised to approach this Court to forbear the respondent from proceeding with the impugned sale notice under Section 8(6) and 9 (1) of the Rules till the SARFAESI Appeal No.244 of 2018 is taken up for passing appropriate orders.

3. In reply, Mr.N.Dilip Kumar, counsel for the respondent, urging this Court to dismiss the writ petition, submitted that the petitioner has got effective statutory alternative remedy before the learned Debts Recovery Tribunal, Madurai. Therefore, he further submits that the petitioner cannot maintain the present writ petition, for S.A.No.244 of 2018 filed against the notice issued under Section 13(4) of the Act is pending and posted for hearing on 05.01.2019. Adding further, he would submit that the petitioner, instead of taking arduous steps in preparing the writ petition and wasting the time of this Court, he could have simply filed an affidavit along by mentioning before the Tribunal for listing the case at the early date and the same could be listed before the Debts Recovery Tribunal and he could pursue the matter before the Tribunal, since S.A.No.244/2018 is also pending now. Leaving that course unutilised, the petitioner unnecessarily approached this Court. Taking support from the judgment of the Apex Court in the case of **Agarwal Tracom Private Limited v. Punjab National Bank and Others** ([2018] 1 SCC 626), he would submit that the writ petition is liable to be dismissed. He further submitted that the Hon'ble Apex Court in similar circumstances reiterating the ratio laid down by the Apex Court in the case of **United Bank of India v. Satyawati Tondon** {[2010] 8 SCC 110} that the High Court should not overlook the settled law in Satyawati Tondon's case, wherein, it is held that will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater



rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions, urged us to dismiss this petition, as not maintainable.

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4. We are also able to find some merits in the submission made by the learned counsel for the respondent.

5. Admittedly, the petitioner, having suffered a notice under Section 13(4) of the SARFAESI Act issued by the respondent, has approached the learned Debts Recovery Tribunal, Madurai with S.A.No.244 of 2018 and the same is pending for consideration. Both the learned counsel for the parties submitted that the matter has been posted for further hearing on 05.01.2019. In the meanwhile, when the first sale notice was issued, it is not known why the petitioner has not approached the learned Debts Recovery Tribunal. However, fortunately, as the sale had to take place within 30 days, finding no takers, the auction did not take place on 10.05.2018. However, finding that the petitioner has not even approached the respondent to make any payment to wriggle out of the SARFAESI proceeding, the respondent Bank also issued second sale notice on 23.08.2018 fixing the date of sale on 19.09.2018 at 1.00 p.m. Even after issuance of the second sale notice, dated 23.08.2018, we are still not able to appreciate as to why the petitioner has not even approached the Debts Recovery Tribunal, Madurai. Therefore, when S.A.No.244 of 2018 filed by the petitioner against the notice issued under Section 13(4) of the SARFAESI Act is still pending, it is for him to work out his remedy. Therefore, finding that when the petitioner has got effective alternative statutory remedy, we are not inclined to entertain this writ petition.

6. Accordingly, the writ petition fails and the same is dismissed giving liberty to the petitioner to approach the Debts Recovery Tribunal. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS II)

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1CC TO MR. N. DILIP KUMAR, ADVOCATE SR 85051

1CC TO MR. V. SANTHAKUMARASAN, ADVOCATE SR 84822

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