BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.11.2018
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS. JUSTICE R.THARANI
W.P.(MD)No.20640 of 2018

O.T.John : Petitioner

Vs.

1. The Regional Manager,
   Canara Bank Regional Office,
   Pandiyan House 4th floor,
   Melaperumal Maistry Street,
   Madurai – 1.

2. The Canara Bank,
   Through its Manager,
   Karaikudi Branch
   Sivagangai District. : Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus to direct the respondents to close the loan and to hand over the documents, which was given as surety for the said educational loan amount number 651 Vidhaya Sagar Scheme disbursed to petitioner's daughter J.Elizabeth Sharon under loan number 0903651007784.

For Petitioner : Ms.G.Sreenisha
For Respondents : Mr.Pala Ramasamy

ORDER

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[Order of the Court was made by **R.SUBBIAH, J]**

This Writ Petition has been filed to direct the respondents to close the loan and to hand over the documents, which was given as surety for the said educational loan availed under Vidhaya Sagar Scheme to the petitioner's daughter, namely, Ms.J.Elizabeth Sharon under loan number 0903651007784.

2.It is the case of the petitioner that for the UG Medical admission to the petitioner's daughter, for the academic year 2004-2005, the petitioner availed an educational loan for a sum of Rs.6,75,000/- and the petitioner stood as co-applicant. It is stated that for the said loan, the petitioner has given documents as security and his daughter also completed her studies in the year 2009. While so, the respondent bank offered one time settlement, pursuant to which, the petitioner has paid the entire loan amount. It is the further case of the petitioner that though the entire loan amount has been paid, the documents, which were given as security, have not been returned to the petitioner. When the petitioner approached the bank, the respondent bank has stated that the entire loan amount has not been settled. However, on 26.07.2017, the respondent Bank sent a notice under Section 13(2) of the SARFAESI Act to pay the outstanding loan amount of Rs.9.22,606/- along with interest at 2%. When the petitioner stated that the entire loan amount has been paid, the respondent Bank sent the said notice and had not returned the documents, which were given as security and hence, the petitioner is before this Court with the aforesaid prayer.

3. When the matter is taken up for hearing, the learned counsel for the respondent Bank 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, the learned Counsel appearing for the petitioner, by way of reply, submitted that when there is a fraud committed on the part of the respondent Bank in retaining the documents in question and serving notice to the petitioner under Section 13(2) of the SARFAESI Act, 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:-
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> 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."

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 approach the Debts Recovery Tribunal and thus, the present writ petition fails.

8. In the result, this writ petition stands dismissed, however, granting liberty to the petitioner to approach the Debts Recovery Appellate Tribunal. No costs.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Regional Manager,
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Pandiyan House 4th floor,
Melaperumal Maistry Street,
Madurai – 1.

2. The Canara Bank,
Through its Manager,
Karaikudi Branch
Sivagangai District.

+1cc to Ms.G.Sreenisha,Advocate Sr.No.95679
+1cc to Mr.Pala Ramasamy, Advocate Sr.No.95531

RR
KM/BK/SAR4/07.12.2018/2P/5C

Order made in
W.P.(MD)No.20640 of 2018
Dated: 14.11.2018