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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2018
CORAM:

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

W.P.(MD)No.9882 of 2017
and
W.M.P.(MD)Nos.8622 and 7575 of 2017

C.Manimala ... Petitioner

Vs.

1. The Authorised Officer,
Indian Bank,
Vilakuthoon Branch,
Madurai.

2. The Branch Manager,
Indian Bank,
Nagamalai Pudukottai Branch,
Madurai. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the D.R.T., Madurai to dispose the petition of S.A.No.17 (unnumbered) by fixing a time frame and till date not to disturb the petitioners peaceful possession of the schedule property by the respondents.

For Petitioner : Mr.R.Ramasamy
For Respondents : Mr.M.Senthil Kumar

O R D E R
[Order of the Court was made by R.SUBBIAH,J.]

The writ petition has been filed for issuance of a writ of Mandamus directing the Debts Recovery Tribunal, Madurai, to dispose of the S.A.No./17 (unnumbered) by fixing a time frame and not to disturb the petitioners peaceful possession of the schedule property by the respondents.

2. It is the case of the petitioner that she has purchased the property in Survey No.59/3 at Kochadai Village, Madurai, through registered sale deed dated 15.12.2003, from one Kamala and built a house with two floors. Thereafter, she got a loan of Rs.36,00,000/- from the respondents Bank by mortgaging the property and paid the E.M.I. regularly. Due to various problems, she is not able to continue the same. Hence, the respondents initiated the proceedings

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under the SARFAESI Act and issued a demand notice and thereafter issued a possession notice on 10.10.2013. Challenging the possession notice, the petitioner filed a S.A.No.258/2013 before the D.R.T. Madurai. The Tribunal directed the petitioner to pay a sum of Rs.8 lakhs. But the petitioner has paid a sum of Rs.4 lakhs. Therefore, the respondents Bank issued a sale notice on 22.02.2014 and 18.08.2014 respectively. Again, the petitioner filed S.A.No.301 of 2014 and the D.R.T. Madurai has directed the petitioner to pay a sum of Rs.16,00,000/- before 26.09.2014. But, she is not able to comply with the same. Before mortgaging the property, she rendered the building to one Manoharan and he has not been informed about the proceedings taken before this Court. This Court, by order dated 14.11.2016 in W.P.No.11417 of 2016, directed the respondents not to evict the said Manoharan till 14.11.2016 and the respondents filed a Cont.P.No.162 of 2017. Thereafter, he handed over the possession to the petitioner. Thereafter only she came to know about the public auction sale held on 26.09.2014 to one Senthilkumar for a sum of Rs.51,22,000/-. The total property worth as per market value is Rs.1,50,00,000/-. But the respondents purposely colluded with Senthilkumar and sold the property for a lower value. Hence, the petitioner has filed Section 5 petition before the D.R.T. Madurai along with S.A. and the same is not yet numbered. Therefore, the petitioner has approached this Court by filing this writ petition for a direction to the DRT, Madurai to dispose of the S.A.No.   /17 (unnumbered) and not to disturb the petitioner's peaceful possession.

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, 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 would submit that without informing the petitioner, the auction was conducted and she is ready to pay the amount if any, time may be fixed and the sale may be stopped.

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

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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."

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 Tribunal, Madurai in accordance with law. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Writs)

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Sub Assistant Registrar

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To

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   Madurai.

2. The Branch Manager,
   Indian Bank,
   Nagamalai Pudukottai Branch,
   Madurai.

+1. C.C. to M/S.M.Senthil Kumar, Advocate SR.No. 95498

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JM/14.03.2019/4P/4C

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