

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.11157 of 2012 and

M.P.Nos.2 and 3 of 2012

1 S.Venkateshan
2 V.Ashtalakshmi .. Petitioners

v.

1 Canara Bank
Park Town Branch
Rep. by its Senior Manager
22, Syedhams Road
Chennai- 600 003.

2 Canara Bank
Asset Recovery Management Branch
Rep. by its Senior Manager
Spencer Towers, 770-A, Anna Salai
Chennai-600 002.

3 Debts Recovery Tribunal-II
Rep. by the Registrar
4th Floor, Spencer Towers,
770-A, Anna Salai
Chennai-600 002.

4 Recovery Officer (Recovery Cell)
Representing Debts Recovery Tribunal-II
4th Floor, Spencer Towers,
770-A, Anna Salai
Chennai-600 002.

5 K.Rajmohan

6 The Commissioner of Police
Greater Chennai City
Chennai- 600 008.

7 Assistant Commissioner of Police
Central Crime Branch
Chennai-8.

- 8 The Inspector of Police
Maduravoyal Police Station
Maduravoyal
Chennai- 600 095.
- 9 K.Thanikachalam
Recovery Officer (Recovery Cell)
Representing Debts Recovery Tribunal-II
5th Floor, Spencer Towers,
770-A, Anna Salai
Chennai-600 002.

(R-9 Impleaded as per order dated
16.07.2013 in M.P.No 4/2012 in W.P.
No.11157/2012) ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the entire records in O.A.No.2131 of 2001 and D.R.C. No.69 of 2004, dated 24.5.2004 on the file of the 3rd respondent and Auction Sale Notice in D.R.C. No.69 of 2004, dated 6.3.2012 on the file of the 4th respondent and quash the Auction Sale Notice in D.R.C. No.69 of 2004 dated 6.3.2012 on the file of the 4th respondent and consequentially terminate all the recovery proceedings in D.R.C. No.69 of 2004 in O.A.No.2131 of 2001 as illegal, null and void in so far as it affects the petitioners' right, title and interest in the property bearing Door No.1, Srinivasa Nagar, Maduravoyal but described in the Auction Sale Notice as The Property a vacant plot of land admeasuring 2800 sq.ft. at Survey No.285 (Srinivasa Nagar) under Plot No.8 in Maduravoyal Villate, Thiruvallur District, Ambattur Vattam, Bounded by : North by vacant land under Survey No.264, South by; 30ft. Road, East by: Plot No9 and West by : Plot No.7, sub registrar Office, Virugambakkam and Registration district of Chennai South.

For Petitioners : Mr.N.s.Nandakumar

For Respondents : Mr.Arunkumar - for R1 & R2
for M/s.Sampathkumar Associates

R3 & R4 - Tribunal

Mr.V.Jayaprakash Narayanan
Govt. Pleader (i/c) - for R6 to R8

No Appearance - for R5 & R9

O R D E R
(Order of the Court made by M.DURAISWAMY,J.)

The petitioners have filed the above Writ Petition to issue a Writ of Certiorarified Mandamus, to call for the records in O.A.No.2131 of 2001 and D.R.C. No.69 of 2004, dated 24.5.2004 on the file of the 3rd respondent and Auction Sale Notice in D.R.C. No.69 of 2004, dated 6.3.2012 on the file of the 4th respondent, to quash the same and consequentially terminate all the recovery proceedings in D.R.C. No.69 of 2004 in O.A.No.2131 of 2001 in respect of the property bearing Door No.1, Srinivasa Nagar, Maduravoyal but described in the Auction Sale Notice as property a vacant plot of land admeasuring 2800 sq.ft. at Survey No.285 (Srinivasa Nagar) under Plot No.8 in Maduravoyal Village, Ambattur Taluk, Thiruvallur District.

2. The respondent-bank raised an objection with regard to the maintainability of the Writ Petition.

3. According to the respondent-bank, when the petitioners have got alternative remedy of making a claim before the Recovery Officer, provided under Rule 11 of the Income Tax Act, which is made applicable under the provisions of the Recovery of Debts Due to the Banks and Financial Institutions Act, if the petitioners have any genuine claim over the property brought for sale. When the petitioners have got alternative remedy available to them, the Writ Petition filed by them cannot be entertained.

4. This Court, while admitting the Writ Petition granted an order of interim stay on 04.06.2012. Since the petitioners have filed the Writ Petition without exhausting the alternative remedy available to them, the Writ Petition cannot be entertained. That apart, admittedly, the O.A filed by the respondent-Bank in O.A.No.2131 of 2001 on the file of the Debts Recovery Tribunal-II, Chennai was decreed on 09.03.2004. If the petitioners are aggrieved over the same, they should have filed an appeal before the Debt Recovery Appellate Tribunal. Without availing the appeal remedy available to them before the Debt Recovery Appellate Tribunal, the Writ Petition cannot be entertained.

5.1. The Hon'ble Supreme Court of India, in the judgments reported in 2018 (3) Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.], and 2018 (1) Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others] held that the aggrieved parties cannot challenge the SARFAESI proceedings directly by filing a Writ Petition under Article 226 of the

Constitution of India without exhausting the appeal remedy available to them.

5.2 In a recent decision of the 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, the Supreme Court has referred to the decision in Authorized Officer, State Bank of Travancore and Anr. vs. Mathew K.C., (2018) 3 SCC 85, and has observed that despite several judgments, including the decision of Mathew K.C., supra, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI') and keep granting interim orders in favour of persons who are Non-Performing Assets. Further, the Apex Court held that Writ Petition filed by the aggrieved party without exhausting the statutory remedy available under the SARFAESI Act and Recovery of Debts Due to Banks and Financial Institutions Act, is not maintainable.

6. Since the ratio laid down by the Hon'ble Apex Court in the above referred judgments squarely applies to the facts and circumstances of the present case, we are not inclined to entertain the Writ Petition. However, it is open to the petitioners to challenge the impugned proceedings in accordance with law.

With these observations, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

Rj

To

1 The Senior Manager
Canara Bank
Park Town Branch
22, Syedhams Road
Chennai- 600 003.

2 The Senior Manager
Canara Bank
Asset Recovery Management Branch
Spencer Towers, 770-A, Anna Salai
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- 7 The Inspector of Police
Maduravoyal Police Station
Maduravoyal, Chennai- 600 095.

+2cc to M/s.Sampathkumar Associates, Advocate SR.No.38612

+1cc to Mr.N.s.Nandakumar, Advocate SR.No.38510

W.P. No.11157 of 2012 and
M.P.Nos.2 and 3 of 2012

GMV (27/05/2019)

सत्यमेव जयते

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