

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.7460 of 2019 and
W.M.P.Nos.8117 & 8118 of 2019

1.K.A.Gopal
2.A.Chandra Kumar
3.K.Kuppan
4.B.Maniraj

.. Petitioners

Vs.

1.The Branch Manager,
State Bank of India,
Uthagamandalam.
2.The Recovery Officer,
Debts Recovery Tribunal,
Coimbatore.

3.K.Manivasagam

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records relating to proclamation of sale notice dated 16.09.2016 and the confirmed sale certificate dated 16.09.2016 issued by the 2nd respondent for the property morefully described in the schedule and quash the same and direct the respondents to restore the possession to the petitioner.

For Petitioners : Ms.Thenmozhi Shivaperumal

ORDER
(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

The petitioners have filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records relating to proclamation of sale notice dated 16.09.2016 and the sale certificate dated 16.09.2016 issued by the 2nd respondent and to quash the same and direct the respondents to restore the possession to the petitioners.

2.The petitioners have challenged the sale notice dated 16.09.2016 and also the Sale Certificate. The petitioners have filed the Writ Petition without exhausting the alternate remedy available to them under Section 17 of the SARFAESI Act.

3.1.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.

3.2.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.

4.Since the petitioners have filed the Writ Petition without exhausting the alternate remedy by way of an appeal available to them under Section 17 of the SARFAESI Act, following the ratio laid down by the Apex Court in the above referred judgments, we are not inclined to entertain the Writ Petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

va

To

- 1.The Branch Manager,
State Bank of India,
Uthagamandalam.
- 2.The Recovery Officer,
Debts Recovery Tribunal,
Coimbatore.

W.P.No.7460 of 2019 and
W.M.P.Nos.8117 & 8118 of 2019

SSI (CO)

RRS (11/04/2019)



WEB COPY