

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.1668 of 2019 and
W.M.P.No.1869 of 2019

A.N.Shabana Banu

.. Petitioners

Vs.

1. HDFC Bank Ltd
No.30 Cenatoph Road Teynampet
Chennai 600 018
Having registered office at HDFC House
Senapathi Bapat Marg Lower Parel (West)
Mumbai-13 rep by
Mr.K.PrakshNarayanan, Senior Manager
Remedial Management Unit
2. M M Anwarulla and Co
Rep by its Partners
No.37, V V Koil Street
Periamet, Chennai-600 003
3. Abdul Hasan Khasimi
4. Hina Fathima
5. Shafeeq Ahmed
6. Asheef Ahmed

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the first respondent not to initiate any further recovery proceedings for auction or sale under SARFAESI Act against the petitioner's property situated in flat No.1, 1st Floor, measuring about 1352 sq.ft in Ranga Nivas, Door No.40/20, Barnaby Road, Kilpauk, Chennai-600 010, Comprised in Suvery No.3116/3, Block No.51, Purasaiwalkam, till the disposal of the appeal pending before the Dept Recovery Appellate Tribunal, Chennai in accordance with law.

For Petitioner : Mr.S.Haja Mohideen Gisthi

O R D E R

(Order of the Court made by The Hon'ble Chief Justice
and M.DURAI SWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of Mandamus directing the respondent No.1 not to initiate any further recovery proceedings for auction or sale under SARFAESI Act against the petitioner's property situated in Flat No.1, 1st Floor, measuring an extent of 1352 sq.ft in Ranga Nivas, Door No.40/20, Barnaby Road, Kilpauk, Chennai-600 010, Comprised in Survey No.3116/3, Block No.51, Purasaiwalkam, till the disposal of the appeal pending before the Dept Recovery Appellate Tribunal, Chennai.

2.The respondent-bank filed an application in O.A.No.184 of 2015 on the file of the Debts Recovery Tribunal-II, Chennai for recovery of a sum of Rs.2,85,45,513.25 together with interest and costs and for other reliefs.

3. By order dated 10.11.2017, The Debts Recovery Tribunal allowed the Original Application.

4. Aggrieved over the same, the petitioner preferred an appeal in A.I.R.No.624 of 2018 before the Debt Recovery Appellate Tribunal, Chennai, along with a petition to condone the delay in filing the appeal.

5. The learned counsel appearing for the petitioner submitted that the petitioner has also filed a stay petition in the appeal in A.I.R.No.624 of 2018. However, the Appellate Tribunal, has ordered notice in both the petitions and posted the matter to 07.02.2019.

6. When the petitioner has filed the appeal belatedly before the Debt Recovery Appellate Tribunal, she should work out her remedy before the Appellate Tribunal. When the petitioner has filed a stay petition before the Appellate Tribunal, simultaneously, she cannot file the Writ Petition before this Court.

7. It is also brought to the notice of this Court that pursuant to the Recovery Certificate in D.R.C.No.35 of 2018, dated 20.01.2018, the petitioner's property was brought to sale and the sale made in favour of the auction purchaser was also confirmed. Further, the learned counsel submitted that the respondent-bank is likely to issue the Sale Certificate in favour of the auction purchaser shortly.

8. In view of the reasons stated above, the Writ Petition cannot be entertained. It is open to the petitioner to work

out her remedy before the Debt Recovery Appellate Tribunal, Chennai in A.I.R.No.624 of 2018.

9. With this observations, the Writ Petition is dismissed. However, the dismissal of this Writ Petition shall not stand in the way of the Appellate tribunal in deciding the appeal independently, on merits and in accordance with law. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

Rj

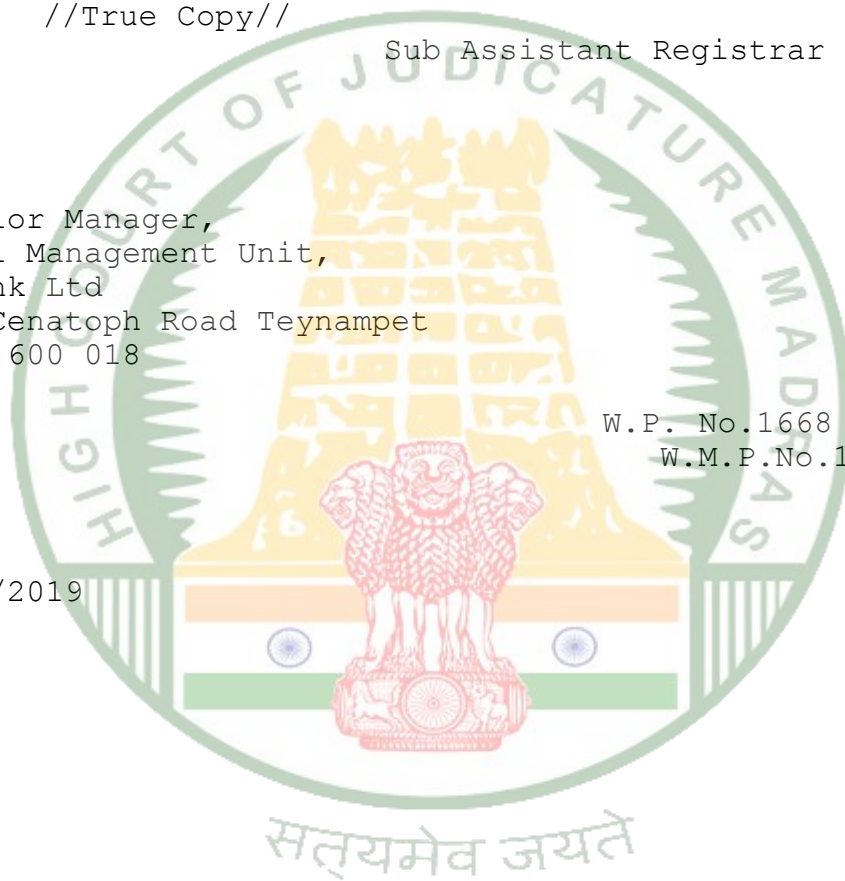
To

1.The Senior Manager,
Remedial Management Unit,
HDFC Bank Ltd
No.30 Cenatoph Road Teynampet
Chennai 600 018

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W.M.P.No.1869 of 2019

PA(CO)

rrs 15/02/2019



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