

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.1898 of 2019 and
W.M.P.Nos.2102 & 2104 of 2019

R.Salsala

.. Petitioner

Vs.

1.The Indian Bank,
Lawspet Branch
rep by its Chief Manager,
No.169, Lawspet Main Road,
Lawspet, Puducherry.

2.The Zonal Manager,
Zonal Office, Indian Bank,
ECR Kokku Park,
Lawspet, Puducherry.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records of the 1st respondent with regard to No.L007/00826 dated 20.12.2018 and to quash the same in respect of the proceedings initiated against the residential house of the petitioner.

For Petitioner : Mr.V.Ajayakumar

सत्यमेव जयते
O R D E R

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

The petitioner has filed the above Writ Petition to issue a Writ of certiorari to call for the records of the 1st respondent with regard to the possession notice dated 20.12.2018 and to quash the same in respect of the proceedings initiated against the residential house of the petitioner.

2.The petitioner has challenged the possession notice dated 20.12.2018 without exhausting the alternative remedy available to her.

3.It is settled position that when the petitioner has got alternative remedy before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, the Writ Petition filed under Section 226 of the Constitution should not be entertained.

4.1.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.

4.2.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.

5.Since the petitioner has filed the Writ Petition without exhausting the alternative remedy by way of an appeal under Section 17 of the SARFAESI Act, following the ratio laid down by the Apex Court, we are not inclined to entertain the Writ Petition. Accordingly, the Writ Petition is dismissed. However, it is open to the petitioner to challenge the possession notice dated 20.12.2018 before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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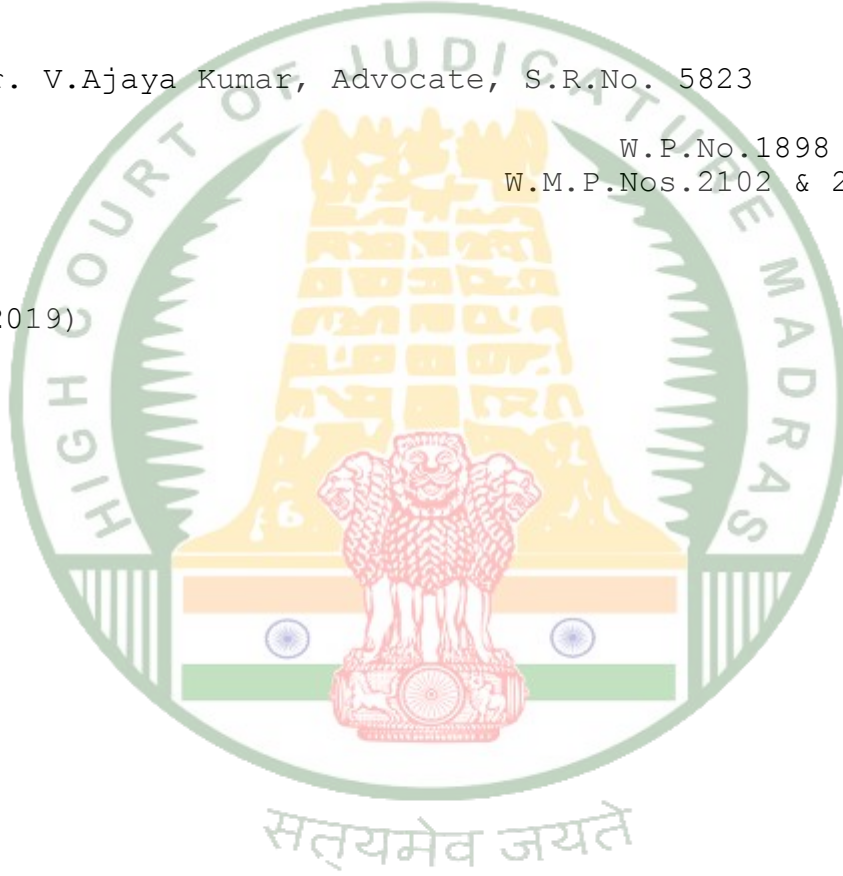
To

1. The Chief Manager,
The Indian Bank,
Lawspet Branch
No.169, Lawspet Main Road,
Lawspet, Puducherry.
- 2.The Zonal Manager,
Zonal Office, Indian Bank,
ECR Kokku Park,
Lawspet, Puducherry.

+1cc to Mr. V.Ajaya Kumar, Advocate, S.R.No. 5823

W.P.No.1898 of 2019 and
W.M.P.Nos.2102 & 2104 of 2019

SPD(CO)
GN(13/02/2019)



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