

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.2374 of 2019 and
W.M.P.No.2618 of 2019

K.Naresh

.. Petitioner

vs.

1 State Bank of India
Tambaram Branch - 01243
No. 58-A V.N. Complex
Kamarajar Street, West Tambaram
Chennai - 600045

2 S.Prakash ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, to call for records pertaining to the Loan Account and the E-auction sale notice issued by the 1st respondent dated 11th June 2018 sale proceedings dated 29th June 2018 and quash the same as illegal given the facts and circumstances of the case.

For Petitioner : Mr.R.Srinivas
for M/s.R & P Partners

For Respondent : Mrs.s.R.Srimathy, for R1

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 Certiorari, to call for records pertaining to the Loan Account and the E-auction sale notice issued by the respondent No.1 dated 11.06.2018, sale proceedings dated 29.06.2018 and to quash the same.

2. The petitioner has filed the Writ Petition challenging the e-auction sale notice dated 11.06.2018 and the sale proceedings dated 29.06.2018, without exhausting the alternate remedy by way of an appeal under section 17 of the SARFAESI Act.

3. It is settled position that the filing of the Writ Petition, challenging the sale notice without exhausting the alternate remedy available under section 17 of the SARFAESI Act, 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. The ratio laid down by the Hon'ble Apex Court in the above referred judgments is applicable to the present case.

6. Since the petitioner has filed the Writ Petition without exhausting the alternate remedy available to him under section 17 of the SARFAESI Act, we are not inclined to entertain the Writ Petition. Accordingly, the Writ Petition is dismissed.

No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

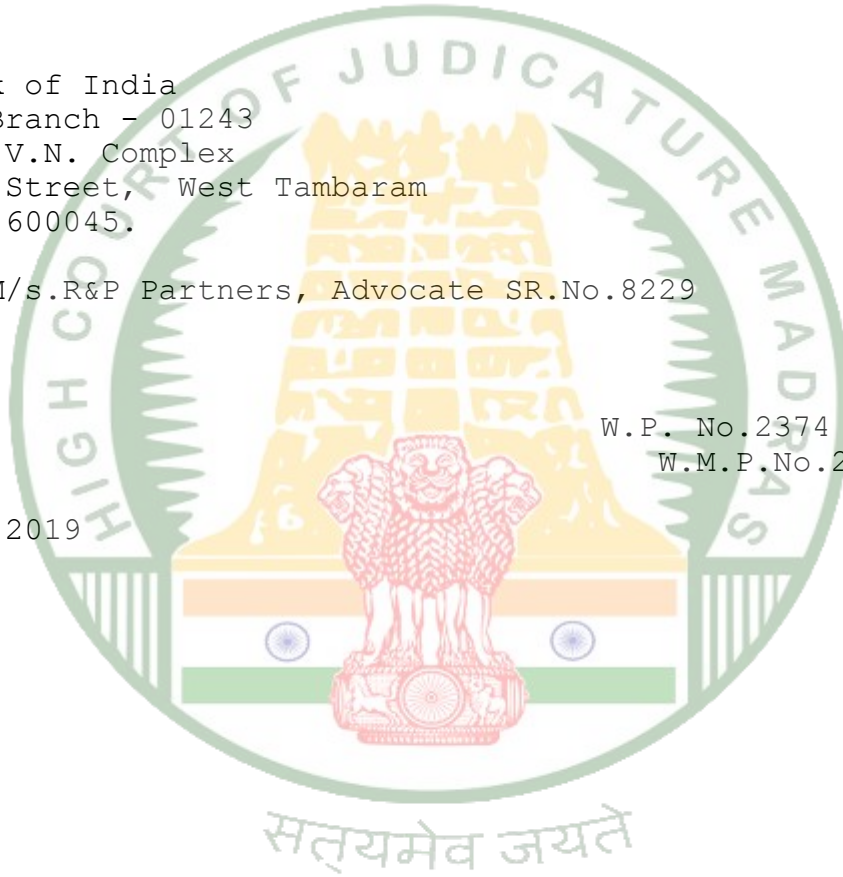
To

State Bank of India
Tambaram Branch - 01243
No. 58-A V.N. Complex
Kamarajar Street, West Tambaram
Chennai - 600045.

+1 cc to M/s.R&P Partners, Advocate SR.No.8229

NRL(CO)
CSL/21.02.2019

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