

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM :

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

AND

THE HON'BLE MR.JUSTICE M.DURAIWAMY

W.P. Nos.41174 and 43734 of 2006 and
M.P.Nos.2 of 2006 in W.P.No.41174 of 2006 and
M.P.No.3 of 2006 in W.P.No.43734 of 2006 and
W.M.P.No. 25002 of 2019 in
W.P.No.41174 of 2006 and
W.M.P.Nos.24507 & 21518 of 2019 in
W.P.No.43734 of 2006

N. Nagarajan .. Petitioner in W.P.No.41174/2006

1. M. Saravanan
2. Mrs. J.Josphine
3. A.Sankaralingam (died)
4. Miss. K.Amardeep Kaur
5. K.Sarankumar
6. K.Ramakrishnan (died)
7. Miss. N.Pushkala
8. Santhi
9. S.Kumari
10. Radha Ramakrishnan
11. Reshma Ramakrishnan
12. Ravina Ramakrishnan

((P-8 & P-9 are substituted as LR's of deceased
P-3 and P-10 to P-12 are substituted as LR's of
deceased P-6 vide order dated 22.07.2019 made
in W.M.P.No.19114/2019 in W.P.No.43734/2006)

.. Petitioners in W.P.No.43734/2006

v.

1. The District Collector and District Magistrate,
Thiruvallur District, Thiruvallur.

2. Standard Chartered Bank,
Rep. By its Authorised signatory and
Power of Attorney Holder
Mr. Sudhir Balram
No.58, Armenian Street,
Chennai - 1.

3. S.Kubendran .. Respondents in both WPs

Writ Petitions filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in Proceedings R.C.No.29923 of 2006.M.2, dated 28.02.2006, quash the same and consequently direct the respondents 1 and 2 to forbear themselves from initiating any action against the property at Plot No.39, 4th Main Road, Indian Bank Colony, Ambattur, Chennai - 53, which is not the property alleged to be mortgaged by the 3rd respondent with the 2nd respondent.

For Petitioners: Mr. V.Balamurugan (W.P.No.41174/2006)
for Mr.P.Muthukumarasamy

Mr.Dhanasekaran (W.P.No.43734/2006)
for Mr.C.anandaramani

For Respondents : Mr.S.Kamalesh Kannan ,
(in both WPs) Government Advocate- for R1

R.VJayachandran - for R2
R3 - Dismissed

सत्यमेव जयते

COMMON ORDER

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

The petitioners have filed the above Writ Petitions to issue Writs of Certiorarified Mandamus, calling for the records relating to the impugned orders passed by the 1st respondent in the proceedings dated 28.02.2006, to quash the same and consequently directing the respondents 1 and 2 to forbear themselves from initiating any action against the property at Plot No.39, 4th Main Road, Indian Bank Colony, Ambattur, Chennai - 53, which is not the property alleged to be mortgaged by the 3rd respondent with the 2nd respondent.

2. Since the issue involved in both the Writ Petitions are in respect of the order passed by the 1st respondent dated 28.02.2006, the Writ Petitions are disposed of by this common order.

3. The petitioners are challenging the orders passed by the 1st respondent under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

4. Prior to the filing of section 14 application, the respondent-bank issued the notices under Sections 13(2) and 13(4) of the SARFAESI Act.

5. As against the order passed by the 1st respondent, the District Collector, in an application filed under section 14 of the SARFAESI Act, the petitioners have got remedy by way of Securitization Appeal under section 17 of the SARFAESI Act.

6. When the petitioners have got alternate remedy available to them under Section 17 of the SARFAESI Act, the Writ Petitions filed by them challenging the orders passed under section 14 cannot be entertained.

7.1. 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.

7.2 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.

8. Since the petitioners have filed the Writ Petitions without exhausting the alternate remedy available to them under section 17 of the SARFAESI Act, we are not inclined to interfere with the order passed by the 1st respondent. In view of the same, the Writ Petitions are dismissed. However, it is open to the petitioners to challenge the impugned order dated 28.02.2006, in accordance with law. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Rj
To

The District Collector and District Magistrate,
Thiruvallur District, Thiruvallur.

+1cc to Mr.T.Dhana sekaran , Advocate SR.No. 75698

+1 cc to Government Pleader Sr.No. 75511

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cp
A.SK(20/09/2019)