IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.3456 of 2019 and
W.M.P.Nos.3755 & 3757 of 2019

R.Arumugam .. Petitioner

Vs.

The Authorized Officer,
Housing Development Finance Corporation of India,
(HDFC Bank),
No.759, ITC Centre, Ground Floor,
Mount Road, Chennai - 600 002. .. Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records pertaining to the e-auction sale notice dated 15.12.2018 issued by the respondent Bank and to quash the same.

For Petitioner : Mr.K.Seetha Ram

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 pertaining to the e-auction sale notice dated 15.12.2018 issued by the respondent Bank and to quash the same.

2.The petitioner has challenged the e-auction sale notice dated 15.12.2018 in this Writ Petition without exhausting the alternative remedy by way of an appeal available to him under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal.

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 petitioner has filed the Writ Petition without exhausting the alternative remedy by way of an appeal available to him 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 iii)

//True Copy//

Sub Assistant Registrar

va
To
The Authorized Officer,
Housing Development Finance Corporation of India,
(HDFC Bank),
No.759, ITC Centre, Ground Floor,
Mount Road, Chennai - 600 002.

W.P.No.3456 of 2019 and
W.M.P.Nos.3755 & 3757 of 2019

A.SK(26/02/2019)