

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAIWAMY

W.P. No.3160 of 2019 and
W.M.P.No.3422 of 2019

V.Velayutham

.. Petitioner

Vs.

1.The Ombudsman,
Reserve Bank of India,
Chennai.

2.The Recovery Officer,
Lakshmi Vilas Officer,
Regional Office, Pondicherry.

3.The Branch Manager,
Lakshmi Vilas Bank,
Kallakurichi Branch,
Villupuram District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of mandamus to direct the respondents 2 & 3 to stop the proceedings of the auction notice dated 01.11.2018 till disposal of the petitioner's representation dated 24.01.2019.

For Petitioner : Ms.Shobana Ramasubramanian

ORDER

**(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 mandamus to direct the respondents 2 & 3 to stop the proceedings of the auction notice dated 01.11.2018 till the disposal of the petitioner's representation dated 24.01.2019.

2. Admittedly, the petitioner has filed the Writ Petition challenging the auction sale notice dated 01.11.2018 without exhausting the alternative remedy by way of an appeal available to him under Section 17 of the SARFAESI Act.

3. The learned counsel appearing for the petitioner submitted that subsequent to the auction sale notice dated 01.11.2018, the Authorized Officer of the Lakshmi Vilas Bank has issued another sale notice dated 14.01.2019, fixing the auction on 02.02.2019.

4. The petitioner should have filed an appeal under Section 17 of the SARFAESI Act instead of filing the present Writ Petition.

5.1. 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.

5.2. 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.

6. 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. However, it is open for the petitioner to challenge the auction sale notice dated 14.01.2019 before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. No costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No

Internet : Yes

Speaking /Non Speaking Order

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सत्यमेव जयते

(V.K.T., CJ.)

(M.D., J.)

01.02.2019

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To

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- 3.The Branch Manager,
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Kallakurichi Branch,
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THE HON'BLE CHIEF JUSTICE
AND
M. DURAISWAMY, J.

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