IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.4063 of 2019 and
W.M.P.Nos.4520 & 4522 of 2019

S.Nisar Ahmed .. Petitioner

Vs.

1.The Indian Bank,
Assistant General Manager/Authorized Officer,
Secured Assets Management Branch North,
3rd Floor, Krest Building,
No.2, Jehangir Street, Chennai - 600 001.

2.Indian Bank,
rep by its Branch Manager,
Vadapalani Branch,
55/1, 100 Feet Road,
Vadapalani, Chennai - 600 026.

3.M/s.Nisaraja PVC & Steels,
rep by its Manging Partner G.T.Raja
No.56/13, NRS Road, Tiruvottiyur,
Thiruvallur, Chennai - 600 019.

4.Surya Steel Corporation,
rep by its Proprietor Saravanan,
No.A-4, Anna Malai Flat,
4/752, Mugapair West,
Chennai - 600 037. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the entire records from the 1st respondent Bank and quash the 1st respondent's sale notice dated 03.01.2019.

For Petitioner : Mr.D.Durairaj
For Respondents : Ms.S.R.Sumathi (R1 & R2)
R3 & R4 - not ready in notice

O R D E R

(ORDER OF THE Court WAS MADE BY 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 Bank and to quash the sale notice dated 03.01.2019.

2.The petitioner has challenged the sale notice dated 03.01.2019 in this Writ Petition without exhausting the alternate remedy available to him under Section 17 of the SARFAESI Act.

3.By order dated 12.02.2019, the Division Bench of this Court, recording the undertaking given by the petitioner that he would deposit a sum of Rs.50 lakhs with the respondent - Bank within a period of ten days, directed the respondent - Bank not to confirm the sale on condition the petitioner paying the sum of Rs.50 lakhs within ten days from 12.02.2019. Further, the Division Bench made it clear that if the amount as undertaken by the petitioner is not deposited, the Writ Petition will be dismissed.

4.When the matter is taken up for hearing, the learned counsel appearing for the respondents 1 & 2 submitted that the petitioner has not complied with the conditional order dated 12.02.2019, which was also admitted by the learned counsel for the petitioner.

5.Since it was made clear on 12.02.2019 itself by the Division Bench that in the event of failure to make deposit of Rs.50 lakhs by the petitioner, the Writ Petition would be dismissed, we do not find any reason to keep the Writ Petition pending. That apart, the petitioner has filed the Writ Petition directly without exhausting the alternate remedy available to him under Section 17 of the SARFAESI Act as against the Sale Notice dated 03.01.2019.

6.1.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.

6.2.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.

7.Since the petitioner has filed the Writ Petition without exhausting the alternate 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 viii)

//True Copy//

Sub Assistant Registrar

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To
1.The Indian Bank,
Assistant General Manager/Authorized Officer,
Secured Assets Management Branch North,
3rd Floor, Krest Building,
No.2, Jehangir Street, Chennai - 600 001.
2.The Branch Manager,
Indian Bank,
Vadapalani Branch,
55/1, 100 Feet Road,
Vadapalani, Chennai - 600 026.

+1cc to Ms.S.R.Sumathi , Advocate SR.No. 123666

W.P.No.4063 of 2019 and
W.M.P.Nos.4520 & 4522 of 2019

A.SK(22/03/2019)