

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.4181 of 2019 and
W.M.P.Nos.4688 to 4690 of 2019

1 V.K.Murugan
2 M.Sasikala

.. Petitioners

v.

The Authorized Officer
Central Bank of India
Thyagaraya Nagar Branch
Chennai - 600 017

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorarified Mandamus, to call for the records connected with the Notice issued in CBI.TNG.2018-19, dated 02.01.2019 passed by the respondent and quash the same and consequently direct the respondent to grant sufficient time to repay the entire loan amount

For Petitioners : Mr.S.Ilamvaludhi
For Respondent : Mr.S.Arunkuamr

O R D E R

(Order of the Court made by M.DURAI SWAMY,J.)

The above Writ Petition has been filed by the petitioners to issue a Writ of Certiorarified Mandamus, to call for the records with regard to the Notice dated 02.01.2019 passed by the respondent, to quash the same and consequently direct the respondent to grant sufficient time to repay the loan amount.

2. The petitioners have challenged the sale notice dated 02.01.2019 issued under the SARFAESI Act. The auction sale was rescheduled to be held on 14.2.2019, which had already expired. After a lapse of one month from the date of auction,

the petitioners have challenged the sale notice.

3. When the Writ Petition came up for admission on 12.02.2019, before the Division Bench of this Court, the Division Bench ordered notice to the respondent-Bank and granted interim order not to finalise the sale for a period of four weeks on condition that the petitioners making a deposit of Rs.50,00,000/- (Rupees fifty lakhs only). Further, the Division Bench made it clear that if the petitioners fail to deposit the said amount, within the period of four weeks, the Writ Petition shall stand dismissed.

4. The learned counsel appearing for the petitioners submitted that the petitioners have not complied with the conditional order dated 12.02.2019.

5. That apart, the remedy open to the petitioners to challenge the sale notice is by way of an appeal under section 17 of the SARFAESI Act.

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. The ratio laid down by the Hon'ble Apex Court in the above referred judgments is applicable to the present case.

8. Since the petitioners have filed the Writ Petition without exhausting the alternate remedy available to them 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 petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Rj

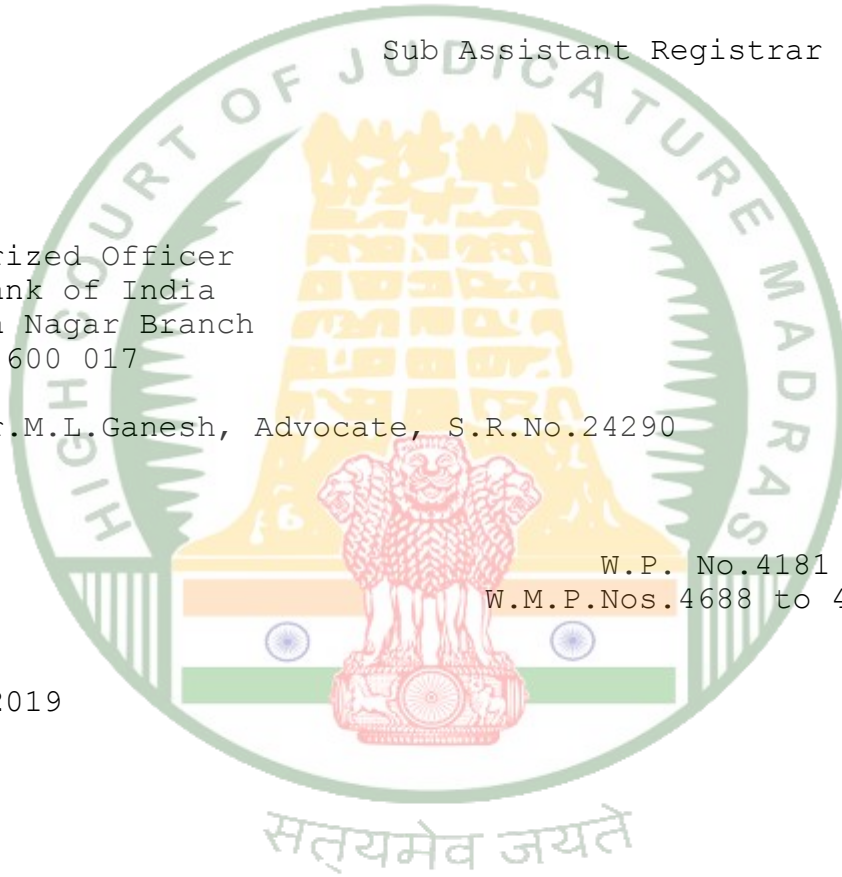
To

The Authorized Officer
Central Bank of India
Thyagaraya Nagar Branch
Chennai - 600 017

+lcc to Mr.M.L.Ganesh, Advocate, S.R.No.24290

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SAI (CO)
CS/08/04/2019



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