

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.02.2019

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

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.4714 of 2019 and
W.M.P.No.5346 of 2019

S.Anitha

.. Petitioner

Vs.

REPCO Home Finance Limited
rep by its Authorized Officer
and Chief Manager,
3rd Floor, Alexander Square,
No.2, Old No.34 & 35,
Sardar Patel Road,
Guindy,
Chennai - 600 032.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records in connection with the tender-cum auction sale notice dated 30.01.2019 issued by the respondent and to quash the same as illegal and improper.

For Petitioner : Mr.Kingston Jerold S

For Respondent : Mr.A.Ilangovan

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 in connection with the Tender-cum Auction Sale Notice dated 30.01.2019 issued by the respondent and to quash the same.

2.By the Auction Sale Notice dated 30.01.2019, the respondent - Bank called for tender for the sale of the property to be held today (i.e.) 20.02.2019 at 11.00 a.m. By the time this Writ Petition was taken up for hearing, the Tender-cum-Auction would have got over. That apart, the petitioner has filed the Writ Petition without challenging the Tender-cum-Auction Sale Notice dated 30.01.2019 before the Debts Recovery

Tribunal. When the petitioner has got alternate remedy by way of an appeal under Section 17 of the SARFAESI Act, the Writ Petition cannot be entertained.

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 alternate remedy by way of an appeal available to her 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 Tender-Cum-Auction Sale Notice dated 30.01.2019 before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

va

+1cc to Mr.A.Ilangovan, Advocate, S.R.No.15359
+1cc to Mr.S.Kingston Jerold, Advocate, S.R.No.15486

W.P.No.4714 of 2019 and
W.M.P.No.5346 of 2019

CP(CO)

rrs 13/03/2019



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