

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.6400 of 2019 and
W.M.P.Nos.7216 & 7217 of 2019

Rajagopal

.. Petitioner

Vs.

1. Raji

2. The Authorized Officer,
IDBI Bank Ltd.,
RAC, Tiruchirapalli Rohini City Square,
Ground Floor, No.57-A, Salai Road,
Tiruchirapalli - 620 018,
Tamil Nadu.

3. M.Rajavel

... Respondents

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 sale certificate (appendix-V - Rule 9 (6)) for immovable property dated 17.10.2018 issued by the 2nd respondent in favour of the 3rd respondent and quash the same.

For Petitioner : Mr.R.Amardeep

O R D E R

(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of certiorari to call for the records pertaining to the Sale Certificate dated 17.10.2018 issued by the 2nd respondent in favour of the 3rd respondent and to quash the same.

2.The petitioner has challenged the Sale Certificate contending that an Insolvency Petition in I.P.No.52 of 2017 on the file of the Principal Sub Court, Salem, filed by the 1st respondent is pending and therefore, the Sale Certificate has to be set aside. For the default committed by the petitioner in repaying the loan amount to the 2nd respondent - Bank, his property was brought to sale and the auction was confirmed in

favour of the 3rd respondent and the Sale Certificate was also issued on 17.10.2018.

3.Since the petitioner has not challenged the Sale Certificate before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, the Writ Petition cannot be entertained.

4.1.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.

4.2.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.

5.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 Authorized Officer,
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W.P.No.6400 of 2019 and
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SSD(CO)
CS/03/04/2019



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