

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.6617 of 2019 and
W.M.P.No.7441 of 2019

M/s.Mahan Textile Process India (P) Ltd.,
rep by its Director A.Mahalingam,
No.47 (D), 4, Kangayam Main Road,
Tirupur - 641 604. .. Petitioner

Vs.

1.The District Magistrate and District Collector,
Tirupur, District Collectorate,
Karuppa Gaundanpalayam,
Tirupur - 641 604.

2.M/s.ASREC (India) Limited
rep by its Manager,
No.3, 3rd Floor, Wellington Estate,
53, Ethiraj Salai, Egmore, Chennai - 600 008.

3.State Bank of Travancore,
rep by its Chief Manager,
32, Railway Feeder Road,
Tirupur - 641 601. .. 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 order of the 1st respondent passed in Ref.No.3957/2018/C3 dated 09.01.2019 and quash the same as unconstitutional, arbitrary and unreasonable being violative of the principles of natural justice.

For Petitioner : Ms.Lakshmidhevi Somnath
For Respondents: Mr.S.Kamalesh Kannan,
Government Advocate (R1)

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 order of the 1st respondent dated 09.01.2019 and to quash the same.

2.The petitioner availed loan from the 3rd respondent and also committed default in repaying the loan. Hence, the 3rd respondent initiated SARFAESI proceedings against the petitioner. The 3rd respondent assigned the debt in favour of the 2nd respondent. The 2nd respondent filed an application under Section 14 of the SARFAESI Act before the 1st respondent. The 1st respondent, by order dated 09.01.2019, directed the Sub Collector to take possession of the mortgaged property/secured asset. Challenging this order, the petitioner has filed the above Writ Petition.

3.Admittedly, the petitioner has not exhausted the alternate remedy by way of an appeal under Section 17 of the SARFAESI Act.

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.When the petitioner has got an alternate remedy by way of

an appeal before the Debts Recovery Tribunal 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 petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.The District Magistrate and District Collector,
Tirupur, District Collectorate,
Karuppa Gaundanpalayam,
Tirupur - 641 604.

2.The Chief Manager,
State Bank of Travancore,
32, Railway Feeder Road,
Tirupur - 641 601.

+1 CC to Mr.C.D. Johnson, Advocate sr 22517.

+1 CC to The Govt. Pleader sr 23129.

W.P.No.6617 of 2019 and
W.M.P.No.7441 of 2019

EV(CO)
SP(29/03/2019)

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