IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. Nos.3358, 3359 and 3360 of 2012 and
M.P.No.1 of 2012 in W.P. No.3358 of 2012

1.K.S.Shanmugham - Deceased
2.S.Jayamani
3.S.Manikandan
4.S.Sathya
(P2 to P4 are substituted as LRs of deceased
P1 as per court order dated 03.09.2018 in
in M.P.Nos.1/2015 W.P. Nos.3358, 3359
and 3360/2012) .. Petitioners in all W.Ps

vs.

1 M/s.Veerappan & Co. Trading Private Limited
No.316, Mettupalayam Road
Coikmbatore - 641 043

2. C.Krishnamurthy
3.K.Savithri
4.K.Saravanan
5.K.Sharmila

6.The South Indian Bank Limited
NSR Road, Saibaba Colony
Coimbatore

7.The Presiding Officer
The debts Recovery tribunal
Cauvery Complex
1670, Trichy Road
Ramanathapuram
Coimabtore - 641 045

8.The Recovery Officer
Debts Recovery Tribunal
Cauvery Complex
1670, Trichy Road
Ramanathapuram
Coimabtore - 641 045

9.R.Padmanaban
10.R.Balakrishnan
11.Anu Sharavanan .. Respondents in all WPs

W.P. No.3058/2012 Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the records of the 7th respondent with respect to the order dated 01.03.2011 passed in M.A. No.17 of 2011 in O.A.No.129 of 2007 on the file of the Debts Recovery Tribunal, Coimbatore and quash the same as illegal and ultravires.

W.P. No.3059/2012 Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the records of the 8th respondent with respect to the order of Confirmation of Sale dated 10.10.2011 passed in R.P. No.105 of 2009 on the file of the Debts Recovery Tribunal, Coimbatore and quash the same as illegal and invalid.

W.P. No.3060/2012 Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the records of the 8th respondent with respect to the Sale Certificate dated 30.11.2011 passed in R.P. No.105 of 2009 on the file of the Debts Recovery Tribunal, Coimbatore and quash the same as illegal and invalid.

For Petitioners (in all WPs) : Mr.S.Parthasarathi, Senior Counsel for Mr.J.Ramakrishnan

For Respondents (in all WPs) : Mr.K.J.Parthasarathi - for R9 & R10

Mr.V.Bhiman - for R6
for Mr.Sampath Kumar Associates

No appearance - for R1 to R4 & R11

Not Ready-in-Notice - R5

Tribunal - R7 & R8

COMMON ORDER
(Order of the Court made by M.DURAISWAMY, J.)

Since the issues involved in all the Writ Petitions are common, by consent of both the parties, all the Writ Petitions are disposed of by this common order.

2. Writ Petition No.3358 of 2012 has been filed by the petitioners to issue a of Writ of Certiorari, to call for the records of the 7th respondent with respect to the order dated 01.03.2011 in M.A. No.17 of 2011 in O.A.No.129 of 2007 on the file of the Debts Recovery Tribunal, Coimbatore and to quash the same.

3. Writ Petition No.3359 of 2012 has been filed by the petitioners to issue a of Writ of Certiorari, to call for the records of the 8th respondent with respect to the order of Confirmation of Sale dated 10.10.2011 in R.P. No.105 of 2009 on the file of the Debts Recovery Tribunal, Coimbatore and to quash the same.

4. Writ Petition No.3360 of 2012 has been filed by the petitioners to issue a of Writ of Certiorari, to call for the records of the 8th respondent with respect to the Sale Certificate dated 30.11.2011 in R.P. No.105 of 2009 on the file of the Debts Recovery Tribunal, Coimbatore and to quash the same.

5. So far as Writ Petition No.3358 of 2012 is concerned, the impugned order dated 01.03.2011 was passed by the Debts Recovery Tribunal, Coimbatore, whereas, in Writ Petition Nos.3359 and 3360 of 2012, the impugned orders dated 10.10.2011 and 30.11.2011 were passed by the Recovery Officer.

6. Under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI'') for recovery of dues, they not only contain comprehensive procedure for recovery of the dues but also envisage Constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. If an effective remedy is available to the aggrieved person and that the said rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions, a Writ Petition under Article 226 of the Constitution of India cannot be entertained.

7. It is settled position that any person aggrieved over the order passed by the Recovery Officer can approach the Debts Recovery Tribunal under section 30 of the Recovery of Debts Due To Banks & Financial Institutions Act, 1993 within 30 days from the date of receipt of a copy of that order.

8.1 The Hon'ble Supreme Court of India, in the judgment reported in (2018) 3 Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.], has held as follows:

" 10. In Satyawati Tandon [United Bank of India Vs. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260], the High Court had restrained [Satyawati Tondon Vs. State of U.P., 2009 SCC Online All 2608] further proceedings under Section 13(4)of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding:-

"43.Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

* * *

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their

discretion in such matters with greater caution, care and circumspection."

11.In Union Bank of India and another Vs. Panchanan Subudhi, (2010) 15 SCC 552: (2013) 2 SCC (Civ) 221, further proceedings under Section 13(4) were stayed in the writ jurisdiction subject to deposit of Rs.10,00,000/- leading this Court to observe as follows :

> "7. In our view, the approach adopted by the High Court was clearly erroneous. When the respondent failed to abide by the terms of one-time settlement, there was no justification for the High Court to entertain the writ petition and that too by ignoring the fact that a statutory alternative remedy was available to the respondent under Section 17 of the Act."

12.The same view was reiterated in Kanaiyalal Lalchand Sachdev vs. State of Maharashtra, (2011) 2 SCC 782 : (2011) 1 SCC (Civ) 570, observing:

> "23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh v. National Insurance Co. Ltd., (2003) 3 SCC 524 : 2003 SCC (Cri) 762; Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675 and SBI v. Allied Chemical Laboratories, (2006) 9 SCC 252)"

13.In Ikbal, Sri Siddeshwara Coop. Bank Ltd., Vs. Ikbal, (2013) 10 SCC 83 : (2013 4 SCC (Civ) 638, it was observed that the action of the Bank under Section 13(4) of the 'SARFAESI Act' available to challenge by the aggrieved under Section 17 was an efficacious remedy and the institution directly under Article 226 was not sustainable, relying upon Satyawati Tandon (United Bank of India Vs. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260), observing: (Ikbal, Sri Siddeshwara Coop. Bank Ltd., Vs. Ikbal, (2013) 10 SCC 83 : (2013 4 SCC (Civ) 638, pp.94-95, paras 27)

"27.No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented."

8.2 In the judgment reported in (2018) 1 Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others] the Apex Court held as follows:

"27. The reason is that Section 17(2) empowers the Tribunal to examine all the issues arising out of the measures taken under Section 13(4) including the measures taken by the secured creditor under Rules 8 and 9 for disposal of the secured assets of the borrower. The expression "provisions of this Act and the Rules made thereunder" occurring in sub-sections (2), (3), (4) and (7) of Section 17 clearly suggests that it includes the action taken under Section 13(4) as also includes therein the action taken under Rules 8 and 9 which deal with the completion of sale of the secured assets. In other words, the measures taken under Section 13 (4) would not be completed unless the entire procedure laid down in Rules 8 and 9 for sale of secured assets is fully complied with by the secured creditor. It is for this reason, the Tribunal has been empowered by Section 17(2),(3) and (4) to examine all the steps taken by the secured creditor with a view to find out as to whether the sale of secured assets was made in conformity with the requirements contained in Section 13(4) read with the Rules or not?

28.We also notice that Rule 9(5) confers express power on the secured creditor to forfeit the deposit made by the auction purchaser in case the auction purchaser commits any default in paying installment of sale money to the secured creditor. Such action taken by the secured creditor is, in our opinion, a part of the measures specified in Section 13(4) and, therefore, it is regarded as a measure taken under Section 13(4) read with Rule 9(5). In our view, the measures taken under Section 13(4) commence with any of the action taken in clauses (a) to (d) and end with measures specified in Rule 9.

29.In our view, therefore, the expression "any of the measures referred to in Section 13(4) taken by secured creditor or his authorized officer" in Section 17(1) would include all actions taken by the secured creditor under the Rules which relate to the measures specified in Section13(4).

...

32.In United Bank of India vs. Satyawati Tondon & Ors., (2010) 8 SCC 110, this Court had the occasion to examine in detail the provisions of the SARFAESI Act and the question regarding invocation of the extraordinary power under Article 226/227 in challenging the actions taken under the SARFAESI Act. Their Lordships gave a note of caution while dealing with the writ filed to challenge the actions taken under the SARFAESI Act and made following pertinent observations which, in our view, squarely apply to the case on hand:

> “42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression “any person” used in Section 17 (1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.
>
> 43.Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves

> inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.
>
> 44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.
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> 45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

9. When the petitioners have got alternative remedy by way of an appeal before the Debt Recovery Appellate Tribunal as against the order dated 01.03.2011 passed by the Debts Recovery Tribunal, Coimbatore in M.A. No.17 of 2011 in O.A.No.129 of 2007 and before the Debts Recovery Tribunal as against the Confirmation of Sale dated 10.10.2011 and the Sale Certificate dated 30.11.2011, passed by the Recovery Officer, we are not inclined to entertain the Writ Petitions. However, it is open to the petitioners to file an appeal before the Debt Recovery Appellate Tribunal as against the order dated 01.03.2011 passed by the Debts Recovery Tribunal, Coimbatore and appeals before the Debts Recovery Tribunal as against the

Confirmation of Sale dated 10.10.2011 and the Sale Certificate dated 30.11.2011, passed by the Recovery Officer. If any applications are filed by the petitioners to condone the delay in filing the appeals before the Tribunal, the same shall be decided on merits and in accordance with law by the Tribunal.

With these observations, the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Rj

To

1.The Presiding Officer
The debts Recovery tribunal
Cauvery Complex
1670, Trichy Road
Ramanathapuram
Coimabtore - 641 045

2.The Recovery Officer
Debts Recovery Tribunal
Cauvery Complex
1670, Trichy Road
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Coimabtore - 641 045

+3cc to Mr.K.Govi Ganesan, Advocate, S.R.No. 2537, 2538, 2539
+3cc to Mr.Sampath Kumar, Advocate, S.R.No. 2785

W.P. Nos.3358, 3359 and 3360 of 2012 and
M.P.No.1 of 2012 in W.P. No.3358 of 2012

VSN II(CO)
GN(05/02/2019)