

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.6368 of 2019 and
W.M.P.No.7199 of 2019

Central Agricultural and Allied Farmers
Co-operative Ltd., (Central Agro Limited)
having its Regd. Office at
#4/299, Selas, Kattery Post,
Coonoor, The Nilgiris, Tamil Nadu - 643 213
rep by its Authorized Signatory Rani Antony .. Petitioner

Vs.

- 1.Indian Bank
rep by its Chief Manager,
Zonal Office, Coimbatore,
MSME Section 359
Nenjappa Road, Coimbatore - 641 018.
- 2.Encore Asset Reconstruction Company Pvt Ltd (EARC),
having its Regd. Office at
#15th Floor, Eros Corporate Towers,
Nehru Place, New Delhi.
- 3.The Authorized Officer,
Encore Asset Reconstruction Company Pvt Ltd (EARC),
5th Floor, Plot No.137,
Section 144, Gurugram - 122 002,
Haryana, India. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records of the 2nd respondent notice dated 28.01.2019 and quash the same and direct the 2nd respondent not to auction the petitioner's property while the proceedings pending in S.A.No.192 of 2015 and O.A.No.546 of 2017 on the file of the Debts Recovery Tribunal, Coimbatore respectively.

For Petitioner : Mr.John Mathew

For Respondents : Mrs.S.R.Sumathy

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 certiorarified mandamus to call for the records of the 2nd respondent dated 28.01.2019 and to quash the same and direct the 2nd respondent not to auction the petitioner's property while the proceedings pending in S.A.No.192 of 2015 and O.A.No.546 of 2017 on the file of the Debts Recovery Tribunal, Coimbatore.

2.The petitioner has filed the Writ Petition challenging the sale notice dated 28.01.2019 without exhausting the alternate remedy by way of an appeal under Section 17 of the SARFAESI Act.

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 directly filed the Writ Petition without exhausting the alternate remedy by way of an appeal available to them 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 approach the Debts Recovery Tribunal in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Manager,
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5th Floor, Plot No.137,
Section 144, Gurugram - 122 002,
Haryana, India.

+1cc to Mr.S.R.Sumathy, Advocate, S.R.No.21033

+1cc to Mr.John Mathew, Advocate, S.R.No.21592

W.P.No.6368 of 2019 and
W.M.P.No.7199 of 2019

CA(CO)
SSM(01/04/2019) .