

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.6971 of 2019 and
W.M.P.No.7706 of 2019

P.Duraisamy

.. Petitioner

Vs.

1.The Authorized Officer,
IDBI Bank Ltd.,
K.T. Towers, Omalur Road,
Four Roads, Salem.

2.The District Magistrate &
District Collector,
Namakkal.

3.M/s.Venkatrayar Sago Factory,
S.F.No.272/4A, Velampalayam Road,
Kakkaveri, Rasipuram Taluk,
Namakkal District - 637 408.

4.K.Venkatraman & Co.,
1/169, K.K.Thottam,
Velampalayam Road,
Kakkaveri, Rasipuram Taluk,
Namakkal District - 637 408.

5.V.Dineshkumar

6.K.Vengataraman

7.D.Gayathri

8.V.Prabhavathi

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for the records of the 2nd respondent in his proceedings in ROC.23165/2017-M4 dated 21.01.2019 and quash the same and thereby forbear the respondents 1 & 2 from evicting the petitioner from the agricultural lands of the petitioner covered in Survey No.253, 254, 255, 257, 273, 274, 275 & 276 situated at Kakkaveri Village, Rasipuram Taluk.

For Petitioner : Mr.N.Suresh

For Respondents: Mr.S.Kamalesh Kannan,
Government Advocate (R2)
Mr.Shivakumar (R1)
R3 to R8 - no appearance

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 21.01.2019 and to quash the same and thereby forbear the respondents 1 & 2 from evicting the petitioner from the agricultural lands of the petitioner covered in Survey No.253, 254, 255, 257, 273, 274, 275 & 276 situated at Kakkaveri Village, Rasipuram Taluk.

2.The 1st respondent filed an application under Section 14 of the SARFAESI Act before the 2nd respondent for taking possession of the secured assets. The 2nd respondent, by order dated 21.01.2019, directed the Sub Collector, Namakkal to take possession of the secured assets.

3.The petitioner has challenged the order passed by the 2nd respondent contending that he is a lessee in respect of the agricultural lands in question and therefore, the order passed by the 2nd respondent is liable to be set aside.

4.The petitioner, being a lessee in respect of the lands in question, has got an alternate remedy by way of an appeal under Section 17 (4-A) of the SARFAESI Act before the Debts Recovery Tribunal.

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 approached this Court without exhausting the alternate remedy available to him, the Writ Petition cannot be entertained. Accordingly, the same is dismissed. However, it is open to the petitioner to challenge the impugned order in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The District Magistrate &
District Collector,
Namakkal.

2.The Authorized Officer,
IDBI Bank Ltd.,
K.T. Towers, Omalur Road,
Four Roads, Salem.

+1cc to Mr.N.Suresh, Advocate Sr.39309
+1cc to Mr.Shivakumar, Advocate Sr.38448

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srg 11/06/2019