

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.6934 of 2019 and
W.M.P.Nos.7673 & 7674 of 2019

M.Padmanaban

.. Petitioner

v.

1 The Regional Director
Reserve bank of India
No.16, Rajaji Salai
Fort Glacis
Chennai-600 001

2 The Authorized officer
City Union Bank Ltd.
No.24-B, Gandhi Nagar
Kumbakonam - 612 001

3 The Manager
City Union Bank Ltd.
30, Thatchur Main Road
Kosapalayam
Arani- 632 301

4 L. Prakash

5 B.Umadevi

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the records pertaining to Re-tender Cum Auction Sale Notice dated 28-11-2018 issued by the 2nd respondent, to quash the same and consequently direct the 2nd and 3rd respondents to release the properties mortgaged with the 3rd respondent by the petitioner.

For Petitioner : Mr.T.Arunkumar

O R D E R
(Order of the Court made by M.DURAISWAMY,J.)

The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the Re-tender Cum Auction Sale Notice dated 28.11.2018 issued by the 2nd respondent, to quash the same and consequently direct the respondents 2 and 3 to release the properties mortgaged with the 3rd respondent by the petitioner.

2. The petitioner has challenged the sale notice dated 28.11.2018 without exhausting the alternate remedy available to him 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. The ratio laid down by the Hon'ble Apex Court in the above referred judgments is applicable to the present case.

5. Since the petitioner has filed the Writ Petition without exhausting the alternate remedy available to him under section 17 of the SARFAESI Act, 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(CCC)

//True Copy//

Sub Assistant Registrar

Rj

To

- 1 The Regional Director
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SJ[CO]
CSL/29.03.2019

सत्यमेव जयते

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