

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.7311 of 2019 and
W.M.P.No. 8004 of 2019

P.S.Sivaperumal

.. Petitioner

v.

The Authorized Officer
UCO Bank
No. 67, Mid Corporate Branch
Burkit Road
Ground Floor
T.Nagar
Chennai - 600017

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration, declaring the act of sale of immovable properties by way of E-auction/private treaty or in any manner by the respondent bank in so far it relates to the closed loan accounts bearing No.19690500000091 and 19690500001161 on 20.10.2016 and any further act done by the respondent bank in so far it relates recovery of amount in loan account No. 19690500011999 by violating the order dated 14.09.2017 passed in O.A.No. 649/2015 by DRT-II Chennai as null and void.

For Petitioner : Mr.K.Sreedhar

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O R D E R

(Order of the Court made by M.DURAI SWAMY,J.)

The petitioner has filed the above Writ Petition to issue a Writ of Declaration, declaring the act of sale of immovable properties by way of E-auction/private treaty or in any manner by the respondent- bank in so far it relates to the closed loan account on 20.10.2016 and any further

act done by the respondent-bank in so far it relates recovery of amount in loan account by violating the order dated 14.09.2017 passed in O.A.No. 649 of 2015 on the file of the Debts Recovery Tribunal II, Chennai.

2. Pursuant to the decree passed in the Original Applications filed by the respondent-bank, the petitioner's properties were brought to sale and E-auction sale notice dated 27.02.2019 was issued.

3. The prayer sought for in the Writ Petition is only to interfere with the E-auction sale notice dated 27.02.2019. The petitioner has filed the Writ Petition challenging the sale notice without exhausting the alternate remedy available to him. If the petitioner is aggrieved over the sale notice, his remedy is only before the Debts Recovery Tribunal 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. The ratio laid down by the Hon'ble Apex Court in the above referred judgments is applicable to the present case.

6. 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 petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

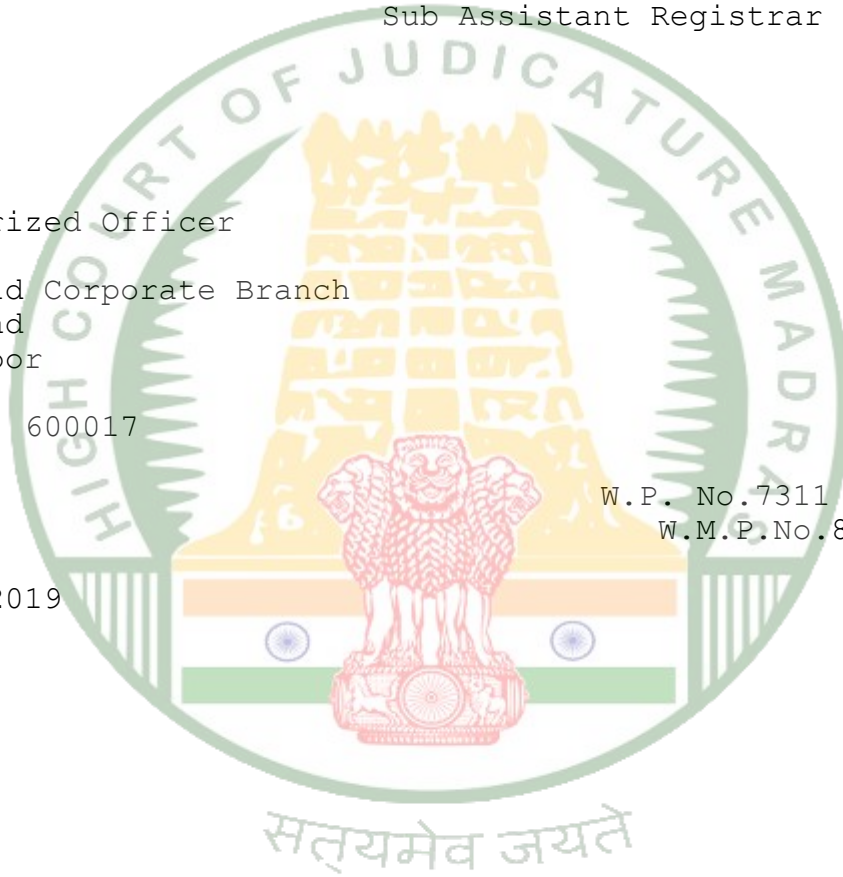
Rj

To

The Authorized Officer
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No. 67, Mid Corporate Branch
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gp(co)
nr 09/04/2019

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