

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.9115 of 2019 and

W.M.P.No.9626 of 2019

D.Purusothaman

.. Petitioner

v.

1 The Authorised Officer
Indian Overseas Bank
Stella Maris College Branch
Cathedral Road, Gopalapuram
Chennai - 600 086

2 The Registrar
Debts Recovery Tribunal
Dewa Tower, 4th Floor
No.770A, Anna Salai
Chennai - 600 002

3 The Registrar
Debt Recovery Appellate Tribunal
No.55, Willingdon Estate
Indian Bank, Ethiraj Salai
Chennai - 600 008

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the entire records and quash the 1st respondent bank auction sale notice dated 11.03.2019 under Rule 8 (6) of Security Interest Enforcement Rule 2002.

For Petitioner : Mr.D.Durairaj

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 Certiorari to call for the records relating to the auction sale notice dated 11.03.2019 and to quash the same.

2. The petitioner has filed the Writ Petition challenging the sale notice dated 11.03.2019 without exhausting the alternative 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. However, it is open to the petitioner to challenge the sale notice dated 11.03.2019, in accordance with law.

With these observations, the Writ Petition is dismissed.
No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-Insp.Cell)

//True copy//

Sub Assistant Registrar

Rj

To

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सत्यमेव जयते

W.P. No.9115 of 2019 and
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VSN II (CO)
GMY (26/04/2019)

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