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.DURAISWAMY

W.P. No.9259 of 2019 and
W.M.P.No. 9813 of 2019

Mrs.P. Pushpa .. Petitioner

v.

1. The Secretary
   Ministry of Finance
   Government of India, South Block
   New Delhi

2. The Chairman
   REPCO Bank, REPCO Towers
   No.33, North Usman Road
   T. Nagar, Chennai - 17

3. The Authorised Officer
   RPCO Bank, Dharmapuri Branch
   No.115/A, Salem Main Road
   Bharathipuram
   Dharmapuri - 636 701 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus, directing the respondents 2 and 3 to withdraw the possession notice dated 08.02.2019.

For Petitioner : Ms.V.Karpagavalli
For Respondents: Mr.A.Elango - For R2 & R3

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 Mandamus, directing the respondents 2 and 3 to withdraw the possession notice dated 08.02.2019.

2. The petitioner has filed the Writ Petition challenging the possession notice dated 08.02.2019 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. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

Rj
To

1. The Secretary
   Ministry of Finance
   Government of India, South Block
   New Delhi

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   Dharmapuri - 636 701

+1cc to Mr.A.Elangovan , Advocate SR.No. 30787
+1cc to Mr.C.P.R.Kanakaraj , Advocate SR.No. 30389

W.P. No.9259 of 2019 and
W.M.P.No.8004 of 2019

A.SK(03/05/2019)