

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAIWAMY

C.R.P.(PD).No.1374 of 2019 and
C.M.P.No.8987 of 20191.M/s.Poonam Trading Company,
123, Tenkasi Shengottai Road,
Ilانji, Tenkasi - 627 805.

2.Navin S.Patel

3.Shivji L.Patel

4.Haresh S.Patel

... Petitioners

Vs.

The Chief Manager & Authorized Officer,
Bank of India,
Asset Recovery Deptt, "Star House",
324, Oppanakara Street,
Coimbatore - 641 001.

... Respondent

Petition filed under Article 227 of the Constitution of India against the order passed in I.A.No.631 of 2019 in I.A.No.3396 of 2018 in S.A.No.558 of 2018 dated 28.02.2019 on the file of the Debts Recovery Tribunal, Coimbatore.

For Petitioners : Mr.AR.L.Sundaresan, Senior Counsel
for M/s.R.Nagasundaram

ORDER

(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

Challenging the order passed in I.A.No.631 of 2019 in I.A.No.3396 of 2018 in S.A.No.558 of 2018 on the file of the Debts Recovery Tribunal, Coimbatore, the petitioners have filed the above Civil Revision Petition.

2.The petitioners filed an application in I.A.No.3396 of 2018 in S.A.No.558 of 2018 seeking for an order of stay of the auction sale notice dated 28.11.2018. By order dated 27.12.2018, the Debts Recovery Tribunal granted an order of interim injunction not to confirm the sale, subject to payment of a sum of Rs.3 crores in two equal installments. Thereafter, the petitioners filed an application in I.A.No.273 of 2019 seeking for extension of time. The Debts Recovery Tribunal, by order dated 28.01.2019, disposed of the application in I.A.No.273 of 2019 finding that the order passed in I.A.No.3396 of 2018 is a self-working order. Thereafter, the petitioners again filed an application in I.A.No.631 of 2019 seeking for extension of time mentioned in the order dated 27.12.2018. The Debts Recovery Tribunal, by order dated 28.02.2019 dismissed the petition, against which, instead of preferring an appeal under Section 18 of the SARFAESI Act, the petitioners have filed the above Civil Revision Petition before this Court.

3. When the petitioners have got remedy of appeal available to them under Section 18 of the SARFAESI Act, the Civil Revision Petition cannot be entertained, circumventing the appeal remedy.

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. Since the petitioners have filed the Civil Revision Petition without approaching the Debt Recovery Appellate Tribunal under Section 18 of the SARFAESI Act, we are not inclined to entertain the Civil Revision Petition. Accordingly, the Civil Revision Petition is dismissed. However, it is open to the petitioners to challenge the impugned order before the Debt Recovery Appellate Tribunal in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते

Index : Yes/No

Internet : Yes

Speaking / Non Speaking Order

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Note: (i) Issue order copy by 11.04.2019.

(ii) The Registry is directed to return the original certified copy of the order to the learned counsel for the petitioners.

(V.K.T., C.J.)

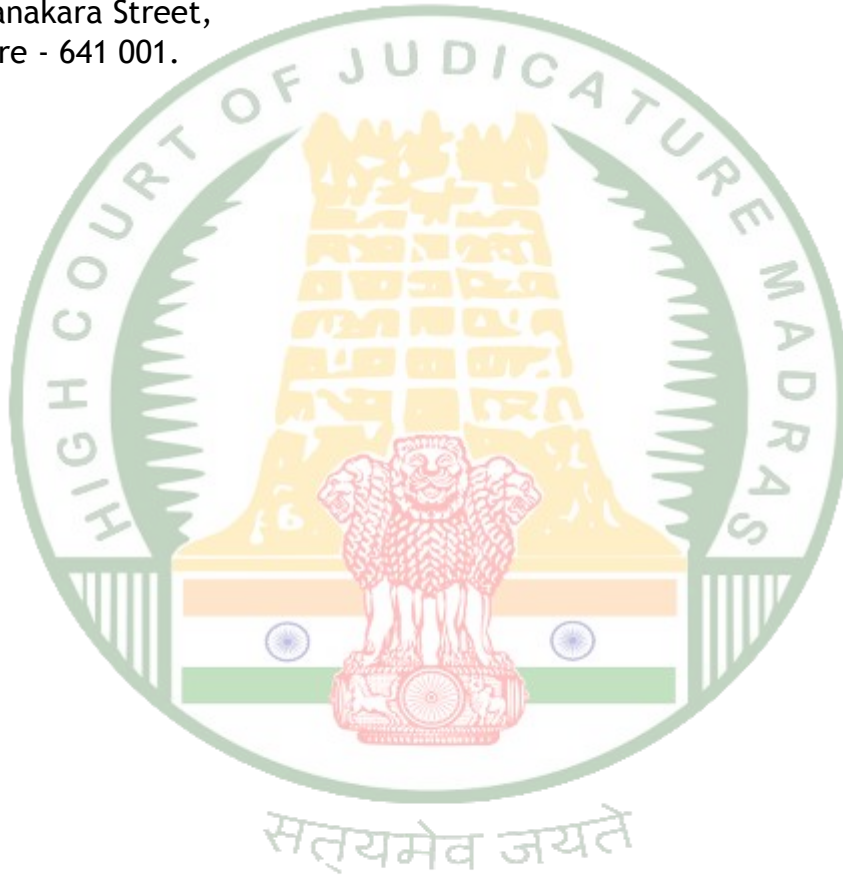
(M.D., J.)

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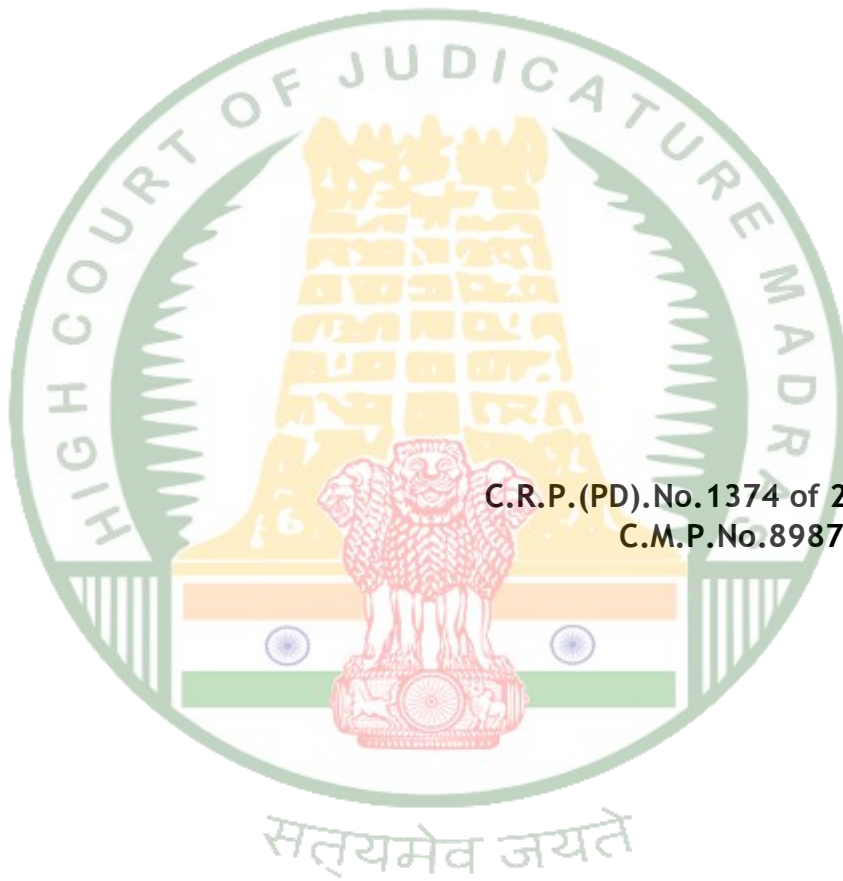
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