

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.9743 of 2019 and
W.M.P.10331 & 10334 of 2019

M/s.Saravana Global Holdings Limited
(Previously known as Saravana Foundations Limited)
rep by its Group CFO, N.Srikanth
Registered Office at No.15, New Giri Road,
T.Nagar, Chennai - 600 017. ... Petitioner

Vs.

- 1.Canara Bank,
rep by its Authorized Officer,
Kasturba Nagar Branch, Adyar,
Chennai - 600 020.
- 2.M/s.KGS Constructions Limited
(previously known as M/s.KGS Milestone
Constructions Limited),
rep by its Director P.V.Shanmugam,
KGS Corporate House, No.63, Kamaraj Avenue,
First Street, Adyar, Chennai - 600 020.
- 3.M/s.KGS Developers Limited
(previously known as M/s.Kgeyes Nelsun Projects
Private Limited),
rep by its Director Gigi George,
No.63, Kamaraj Avenue,
First Street, Adyar, Chennai - 600 020.
- 4.K.Kumaran
- 5.Gigi George
- 6.P.V.Shanmugam
- 7.M/s.KGEYES Residency Private Limited
rep by its Director P.V.Shanmugam
No.10, Srushti Sthal, 2nd Cross Street,
R.A.Puram, Chennai - 600 028.

8.M/s.Saravana Realty Private Limited,
rep by its Director P.V.Shanmugam
No.43, Vijayaraghava Road,
T.Nagar, Chennai - 600 017.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records of auction sale notice dated 12.03.2019 issued by the 1st respondent and quash the same and direct the 1st respondent to abide by the terms as laid out in paragraph 1 of its letter dated 12.02.2016.

For Petitioner : Mr.S.Rajasekar
for M/s.Sashidhar Sivakumar

O R D E R

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

The petitioner has filed the above Writ Petition to issue a Writ of certiorarified mandamus to call for the records of the auction sale notice dated 12.03.2019 issued by the 1st respondent and to quash the same and direct the 1st respondent to abide by the terms as laid out in paragraph 1 of its letter dated 12.02.2016.

2.The petitioner has challenged the auction sale notice dated 12.03.2019 issued by the 2nd respondent in this Writ Petition without exhausting the alternate and efficacious remedy available to them 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. Since the petitioner has filed the Writ Petition without exhausting the alternate remedy by way of an appeal available to them under Section 17 of the SARFAESI Act, following the ratio laid down by the Apex Court in the above referred judgments, we are not inclined to entertain the Writ Petition. Accordingly, the Writ Petition is dismissed. However, it is open to the petitioner to challenge the auction sale notice dated 12.03.2019 before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Authorized Officer,
Canara Bank,
Kasturba Nagar Branch, Adyar,
Chennai - 600 020.

+1cc to Mr. Sashidar Sivakumar, Advocate, S.R.No.31290

RK(CO)
GN(03/05/2019)

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