

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.9732 of 2019 and
W.M.P.Nos.10325 & 10327 of 2019

D.Gowrishankar

.. Petitioner

v.

1 The Authorized Officer
Indian Overseas Bank
Kangayam Branch
No.7/74, P.S.G.Building
Karur Road, Kangayam
Tiruppur 638 701

2 Mrs.D.Lakshmi

3 Mrs.D.Kalayarasi

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records culminating in the order of the Debts Recovery Tribunal, Coimbatore I.A.689/2019 in S.A No.530/2018, dated 6.3.2019 wherein dates were fixed for paying the monies and quash the same and permit the petitioner to deposit the entire sum of Rs. 31,40,000/- on or before 30.4.2019 before the Debt Recovery Tribunal, Coimbatore.

For Petitioner : Mr.Aravind Subramaniyam M.

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 Certiorarified Mandamus to call for the records culminating in the order of the Debts Recovery Tribunal, Coimbatore in I.A.689 of 2019 in S.A.No.530 of 2018, dated 6.3.2019, to quash the same and permit the petitioner to deposit the entire sum of Rs.31,40,000/- on or before 30.4.2019 before the Debt Recovery Tribunal, Coimbatore.

2. Challenging the SARFAESI proceedings, the petitioner filed an appeal in S.A.No.530 of 2018 before the Debts Recovery Tribunal, Coimbatore. In the said appeal, the petitioner also filed an Interlocutory Application in I.A.689 of 2019 seeking for an order of interim stay of the e-auction sale notice dated 22.02.2019.

3. The Debts Recovery Tribunal, by order dated 06.03.2019, granted an order of interim stay on condition that the petitioner making payment of Rs.31,40,000/- in four installments. Challenging this order, the petitioner has filed the Writ Petition before this Court.

4. When the petitioner has got alternate and efficacious remedy available to him under section 18 of the SARFAESI Act, the present Writ Petition cannot be entertained.

5.1. 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.

5.2 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.

6. The ratio laid down by the Hon'ble Apex Court in the above referred judgments is applicable to the present case.

7. Since the petitioner has filed the Writ Petition without exhausting the alternate remedy available to him under section 18 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 petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Rj

To

1)The Authorized Officer
Indian Overseas Bank
Kangayam Branch
No.7/74, P.S.G.Building
Karur Road, Kangayam
Tiruppur 638 701

2)The Debts Recovery Tribunal,
Coimbatore

+1cc to Mr.M.Aravind Subramaniam,
Advocate in sr.no.31533 (25.04.2019)

W.P. No.9732 of 2019 and
W.M.P.Nos.10325 & 10327 of 2019

VBA (CO)
SSM(23/04/2019)

सत्यमेव जयते
WEB COPY