

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. Nos.8785 & 8786 of 2015 and
M.P.Nos.1 & 1 of 2015

G.Tirumalvalavan ... Petitioner in W.P.No.8785/2015
K.Chandrasekar ... Petitioner in W.P.No.8786/2015

Vs.

1.The Authorized Officer and Chief Manager,
Indian Bank, Guindy Branch,
131, Sidco Building,
GST Road, Guindy,
Chennai - 600 032.

2.Indian Bank,
rep by its Branch Manager,
Guindy Branch,
131, Sidco Building,
GST Road, Guindy,
Chennai - 600 032.

3.M/s.Winstar Exim Pvt. Ltd.,
Flat E, Second Floor,
F47, 1st Main Road,
Anna Nagar East,
Chennai - 600 098.

4.Ganapathiraman

5.S.Ganesan

6.M.Senthil Kumar .. Respondents in both in W.Ps

Petitions filed under Article 226 of the
Constitution of India praying for issue of Writ of
certiorari to call for the entire records pertaining to
the impugned order of the sale notice dated 25.02.2015
passed by the 1st respondent and to quash the same.

For Petitioners : Mr.V.Stalin
(in both W.Ps)

For Respondents : Mr.Kalyanaraman
(in both W.Ps) for M/s.Aiyer & Dolia (R1 & R2)
R4 & R5 - no appearance
R6 - Died
R3 - not ready in notice

C O M M O N O R D E R
(Order of the Court made by the Hon'ble Chief Justice
and M.Duraiswamy, J.)

Since the petitioners have challenged the impugned sale notice dated 25.02.2015 in both the Writ Petitions, the Writ Petitions are disposed of by this common order.

2.The petitioners have filed the above Writ Petition to issue a Writ of certiorari to call for the records pertaining to the impugned sale notice dated 25.02.2015 issued by the 1st respondent and to quash the same.

3.The petitioners have challenged the sale notice dated 25.02.2015 without exhausting the alternative remedy available to them under Section 17 of the SARFAESI Act.

4.1.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.

4.2.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.

5.Since the petitioners have filed the Writ Petitions without exhausting the alternative remedy by way of an appeal 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 Petitions. Accordingly, the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Authorized Officer and Chief Manager,
Indian Bank, Guindy Branch,
131, Sidco Building,
GST Road, Guindy,
Chennai - 600 032.

2.The Branch Manager,
Indian Bank,
Guindy Branch,
131, Sidco Building,
GST Road, Guindy,
Chennai - 600 032.

+1cc to Mr.V.Stalin , Advocate SR.No. 9380

+2ccs to M/s.Aiyer & Dolia , Advocate SR.No. 8944,8943

W.P.Nos.8785 & 8786 of 2015 and

M.P.Nos.1 & 1 of 2015

A.SK(22/02/2019)

सत्यमेव जयते
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