

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.12062 of 2019 and

W.M.P.No.12338 of 2019

- 1.M/s.Mona Packaging Products,
rep by its Partner Mohamed Al Ameen,
No.75, Chettiar Agaram Road,
Behind Kumaran Theatre,
Vanagaram, Chennai - 602 102.
- 2.M.M.Shahul Hameed
3.M.S.Sheik Dawood
4.Mohamed Al Ameen .. Petitioners

Vs.

- 1.M/s.ICMC Packaging Ltd.,
rep by its Managing Director M.Kannan
No.36, Ambattur Industrial Estate,
Ambattur, Chennai - 600 058.
- 2.M/s.Indian Bank,
M/s.Indian Bank Esplanade Branch,
No.6, Esplanade Road,
Esplanade, Chennai - 600 108.
- 3.The Recovery Officer,
Debts Recovery Tribunal - II,
4th Floor, Spencer Plaza,
No.770 A, Anna Salai,
Chennai - 600 002. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for the records pertaining to the order dated 16.03.2019 passed in S.R.No.1568 of 2019 in D.R.C.No.83 of 2004 in O.A.No.2081 of 2001 by the 3rd respondent and to quash the same and consequently direct the 3rd respondent to process that application in S.R.No.1568 of 2019 in accordance with law.

For Petitioners : Mr.Girish Neelakantan B.K.

O R D E R

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

The petitioners have filed the above Writ Petition to issue a Writ of certiorarified mandamus to call for the records pertaining to the order dated 16.03.2019 passed in S.R.No.1568 of 2019 in D.R.C.No.83 of 2004 in O.A.No.2081 of 2001 on the file of the Recovery Officer, Debts Recovery Tribunal - II, Chennai and to quash the same and consequently direct the 3rd respondent to process that application in S.R.No.1568 of 2019 in accordance with law.

2.The 3rd respondent, the Recovery Officer, by order dated 16.03.2019, dismissed the application filed by the petitioners as not maintainable. As against this order, the petitioners have filed the above Writ Petition. As against the order passed by the Recovery Officer, the petitioners have got remedy by way of an appeal before the Debts Recovery Tribunal under Section 30 of the Recovery of Debts and Bankruptcy Act. The petitioners have not exhausted the alternate remedy available to them.

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 approached this Court without exhausting the alternate remedy available to them, the Writ Petition cannot be entertained. Accordingly, the same is dismissed. However, it is open to the petitioners to challenge the impugned order dated 16.03.2019 passed by the Recovery Officer before the Debts Recovery Tribunal in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

va

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

1. M/s.Indian Bank,
M/s.Indian Bank Esplanade Branch,
No.6, Esplanade Road,
Esplanade, Chennai - 600 108.
2. The Recovery Officer,
Debts Recovery Tribunal - II,
4th Floor, Spencer Plaza,
No.770, Anna Salai, Chennai - 600 002.

+1cc to Mr.B.K.Girish Neelakantan, Advocate, SR.No.42968

W.P.No.12062 of 2019 and
W.M.P.No.12338 of 2019

Kak (20/06/2019)

सत्यमेव जयते

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