

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.11950 of 2019 and
W.M.P.Nos.12176 & 12177 of 2019

M/s.Supriya Spinning Mills Private Limited
rep by Director Talluri Lakshmi Narayana,
D.No.113, First Floor, A.P.Cotton Building,
Lakshmipuram Main Road,
Guntur 522 007 Main Road,
Guntur 522 007 AP

.. Petitioner

Vs.

1.Punjab National Bank,
Asset Recovery Management Branch,
448-A, Dr.Nanjappa Road,
Coimbatore - 641 018.

2.Canara Bank,
Oppanakara Street Main Branch,
P.B.No.19, 152, Oppanakara Street,
Coimbatore - 641 001.

3.State Bank of India,
Formerly State Bank of Hyderabad,
Thousand Lights Branch,
714, Anna Salai Pathari Road,
Chennai - 600 006.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to pass an order to enforce the order of the District Court, Guntur and the claims on the property granted to the petitioner and to call for the respondents to stay of the e-auctions or the inclusion of the petitioner's claim on the attached properties or grant the petitioner shares of the proceeds pro rata and to stay the e-auctions or to include the claims of the petitioner in the e-auctions or allow the petitioner a share of the proceedings pro-rata and to compel the respondents to produce information pertaining to the sale

of the attached property in the e-auctions dated 10.02.2017 and on any other date and quash the same to nullify the previous auctions.

For Petitioner : Mr.B.Ramkumar

O R D E R

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

The petitioner has filed the above Writ Petition to issue a Writ of certiorarified mandamus to call for the records relating to the e-auction sale notice dated 04.04.2019.

2.When the petitioner has got remedy by way of an appeal under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, the petitioner has filed the Writ Petition without exhausting the alternate 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 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 Petitions. Accordingly, the Writ Petition is dismissed. However, it is open to the petitioner to challenge the auction sale notice dated 04.04.2019 under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr. B. Ramkumar, Advocate SR.No. 38077

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JP (CO)
A.SK(22/04/2019)