

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.06.2019

CORAM :

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

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.16983 of 2019 and
W.M.P.No.16545 of 2019

M/s.Ganekar & Co.,
Proprietor Sri.V.Elangovan
No.71, Elayamudali Street,
Old Washermenpet,
Chennai - 600 021.

.. Petitioner

Vs.

1.Canara Bank,
rep by its Authorized Officer,
Tondiarpet Branch,
No.50, G.A. Road, Tondiarpet,
Chennai - 600 002.

2.R.Raju

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari calling for the 1st respondent in impugned sale certificate dated 18.11.2017 in reference No.CNC RO2 TOND GANE issued in favour of the 2nd respondent pertaining to the petitioner's property situate at Old Door No.33, New Door No.71, present Door No.219, Elaya Mudali Street, Old Washermenpet, Chennai -21 and comprised in O.S.No.1080 Part R.S.No.3801/2 part, as per Patta R.S.No.3801/32, patta C No.163 Part dated 31.07.1962 Patta CA No.743/70-71 dated 22.03.1971 present Patta No.25/92 dated 07.02.1992 R.S.No.3801/32 Block No.57, Kotai Tondiarpet Taluk, Tondiarpet Village, North Chennai Registration District, Royapuram Sub Registration District measuring an extent of 760 sq.ft. as per Patta 790 sq.ft. and to quash the same as arbitrary and illegal and against the provisions of Security Interest Enforcement Rule 2002.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.R.Chandrasudan

For Respondents: Mrs.S.R.Sumathy (R1)

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 certiorari to call for the records of the 1st respondent in respect of the sale certificate dated 18.11.2017 issued in favour of the 2nd respondent pertaining to the petitioner's property situate at Old Door No.33, New Door No.71, present Door No.219, Elaya Mudali Street, Old Washermenpet, Chennai -21, measuring an extent of 760 sq.ft. as per Patta 790 sq.ft. and to quash the same.

2.The petitioner has filed the Writ Petition challenging the Sale Certificate issued in favour of the 2nd respondent without exhausting the alternate remedy by way of an appeal available to them under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal.

3. Though the petitioner has got alternate remedy by way of an appeal available to them under Section 17 of the SARFAESI Act, they have filed the Writ Petition challenging the Sale Certificate directly, which cannot be entertained.

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 Sale Certificate dated 18.11.2017 before the Debts Recovery Tribunal in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

va

To

The Authorized Officer,
Canara Bank,
TondiarpetBranch,
No.50, G.A. Road, Tondiarpet,
Chennai - 600 002.

+1cc to Mr.R.Chandrasudan, Advocate, S.R.No.49336

W.P.No.16983 of 2019 and
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MP (CO)

RRS (26/06/2019)

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