

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2019

CORAM

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.6309 of 2014

W.S.Suresh Kumar

.. Petitioner

Vs

1. The Chief Metropolitan Magistrate,
Egmore, Chennai.
 2. The Authorised Officer,
State Bank of India,
Stressed Assets Management Branch,
Red Cross Buildings,
No.32, Montieth Road,
Egmore, Chennai - 600 008.
 3. M/s.J.M. Financial Assets Reconstruction
Company Pvt. Ltd.,
rep. By its Authorised Officer,
7th Floor, Chenergy, A.Marathe Marg,
Prabhadevi, Mumbai-400 025.
- .. Respondents

(Respondent No.3 impleaded as per order
dated 10.06.2014 in M.P.No.3 of 2014)

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 12.12.2013 made in Cr1.M.P.No.8484 of 2013 passed by the 1st respondent and quash the same and consequently, direct the 2nd respondent to handover the properties more fully described in the schedule appended to the writ petition.

For Petitioner : Mr.Jayesh B.Dolia
for M/s.Aiyar and Dolia

For Respondents : No Appearance
for respondent Nos.2 and 3

ORDER

(Order of the Court was made by M.Duraiswamy, J.)

The petitioner, who is a borrower, has filed the above writ petition to issue a writ of certiorarified mandamus calling for the records pertaining to the order dated 12.12.2013 made in Crl.M.P.No.8484 of 2013 passed by the 1st respondent and quash the same and consequently, direct the 2nd respondent to handover the properties more fully described in the schedule appended to the writ petition.

2. It is settled position that as against the order dated 12.12.2013 made in Crl.M.P.No.8484 of 2013 passed by the 1st respondent, the aggrieved party can always prefer an appeal before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. 3. The Supreme Court in The Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C., reported in (2018) 3 SCC 85 and Agarwal Tracom Private Limited Vs. Punjab National Bank and others, reported in (2018) 1 SCC 626 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. In a recent decision of the Supreme Court in ICICI Bank Limited v. Umakanta Mohapatra, reported in 2018 SCC Online SC 2349, the Supreme Court has referred to the decision in Mathew K.C. case, referred supra, 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 SARFAESI Act and keep granting interim orders in favour of persons who are Non-Performing Assets. Further, the Supreme 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. Following the said ratio laid down in the decisions cited supra, 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 impugned order dated 12.12.2013 passed by the first respondent in Crl.M.P.No.8484 of 2013 before the Debts Recovery Tribunal in accordance with law. On such appeal being filed, the Debts Recovery Tribunal shall consider the same on merits and in accordance with law, including the issue of limitation in filing the appeal. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To:

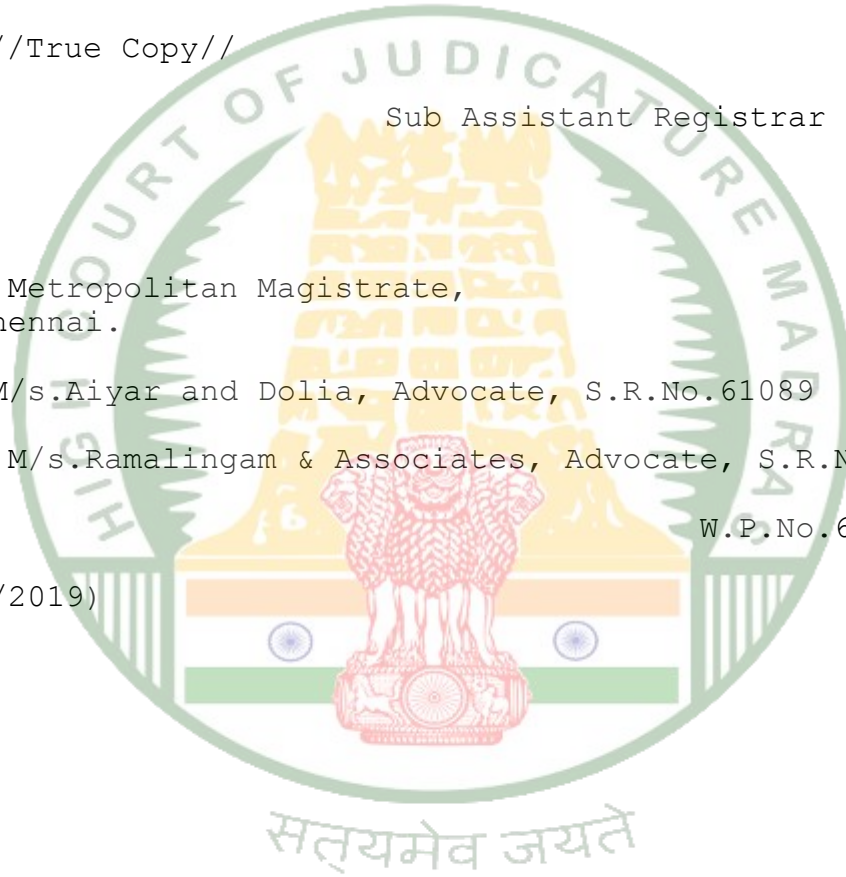
The Chief Metropolitan Magistrate,
Egmore, Chennai.

+1 cc to M/s.Aiyar and Dolia, Advocate, S.R.No.61089

+2 ccs to M/s.Ramalingam & Associates, Advocate, S.R.No.60794

W.P.No.6309 of 2014

VSn-II (CO)
SSM(20/08/2019)



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