

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. Nos.10524 & 13540 of 2014 and
M.P.No.2 of 2014 in W.P.No.10524 of 2014
and M.P.No.3 of 2014 in W.P.No.13540 of 2014

W.P.No.10524 of 2014:

J.Srinivasan

.. Petitioner

Vs.

1.The Chief Manager-cum-Authorized Officer,
Bank of Maharashtra,
No.4, Sivagnanam Road,
T.Nagar, Chennai - 600 017.

2.The Chief Manager,
Bank of Maharashtra,
Coimbatore Branch, Rangai Gownder Street,
Coimbatore - 641 018.

3.K.M.Manoharan

.. Respondents

(R3 impleaded vide order dated 18.07.2014
in M.P.No.3 of 2014 in W.P.No.10524 of 2014)

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari calling for the records of the 1st respondent in issuance of the notice dated 18.03.2014 and to quash the same.

For Petitioner : Mr.A.Kalaivanan

For Respondents: Mr.S.Sathiyandarayanan (R1 & R2)
R3 - not ready in notice

W.P.No.13540 of 2014:

1.Minor E.S.Praveen Babu
2.Minor E.S.Mahendra Prasath
rep by their mother and
natural guardian N.Easwari

.. Petitioners

Vs.

1.Bank of Maharashtra,
Chennai Zonal Officer,
4, Sivagnanam Road,
T.Nagar, Chennai - 600 017.

2.G.Arunagiri
3.P.J.Selvapathy
4.GEE KEES Machines,
rep by its Partner G.Arunagiri
56/4, Mullai Street,
Tiruppur - 641 603.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari calling for the proceedings of the 1st respondent made in Section 13(2) notice dated 07.10.2013 and possession notice dated 18.03.2014 and to quash the same.

For Petitioners : Mr.S.Thirumavalavan

For Respondents : Mr.S.Sathiyarayanan (R1)
R2, R4 - not ready in notice
R3 - no appearance

C O M M O N O R D E R

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

W.P.No.10524 of 2014 has been filed by the petitioner to issue a Writ of certiorari to call for the records on the file of the 1st respondent in respect of the notice dated 18.03.2014 and to quash the same. The petitioner, who is a guarantor has filed the above Writ Petition challenging the possession notice dated 18.03.2014.

2.Similarly, in W.P.No.13540 of 2014, the petitioners also challenged the possession notice dated 18.03.2014 and also the notice issued under Section 13(2) notice dated 07.10.2013.

3.It is settled position that a notice issued under Section 13(2) of the SARFAESI Act cannot be challenged either before this Court or before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. So far as the Section 13(4) notice dated 18.03.2014 is concerned, the petitioners have got alternate and efficacious remedy available to them under Section 17 of the

SARFAESI Act before the Debts Recovery Tribunal. Without exhausting the alternate and efficacious remedy available, the Writ Petitions 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 petitioners have filed the Writ Petitions 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 Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Manager-cum-Authorized Officer,
Bank of Maharashtra,
No.4, Sivagnanam Road,
T.Nagar, Chennai - 600 017.

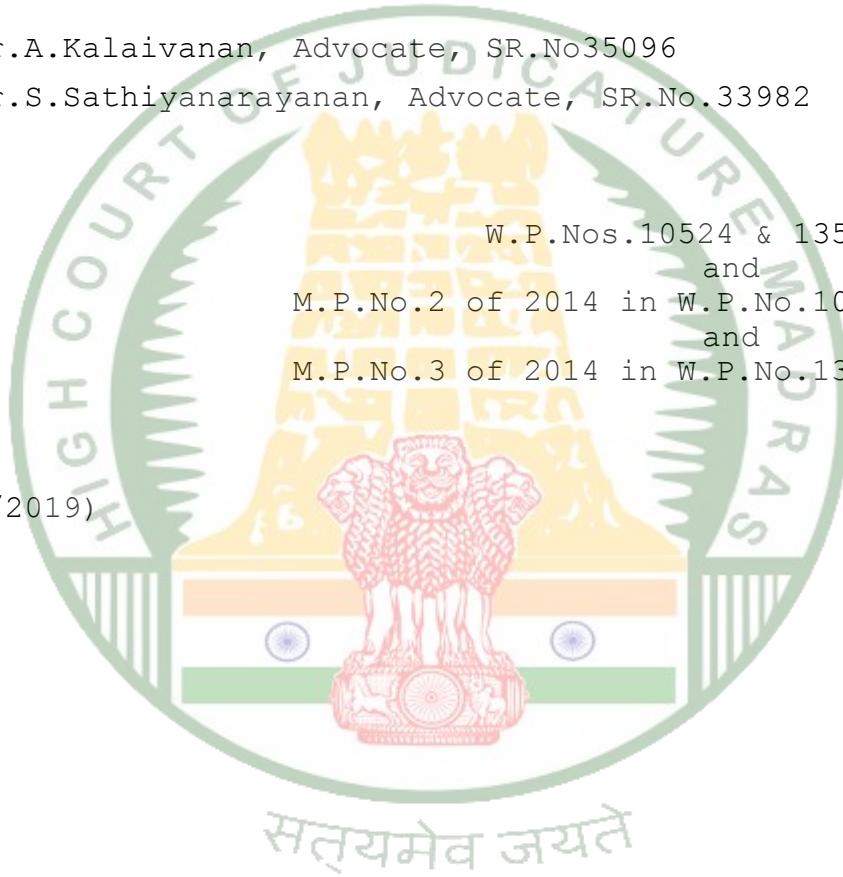
2. The Chief Manager,
Bank of Maharashtra,
Coimbatore Branch, Rangai Gownder Street,
Coimbatore - 641 018.

+1cc to Mr.A.Kalaivanan, Advocate, SR.No35096

+1cc to Mr.S.Sathiyandarayanan, Advocate, SR.No.33982

W.P.Nos.10524 & 13540 of 2014
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Kak (20/05/2019)



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