

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAIWAMY

W.P.No.18846 of 2019 and
W.M.P.Nos.18200 & 18204 of 2019

Velusamy

.. Petitioner

Vs.

1.The Registrar,
Avinashi Road,
Tirupur District.

2.M/s.Sundaram BNP Paribas,
Home Finance Limited,
Sundaram Towers,
No.46, Whites Road,
Chennai - 600 014.

3.L.Janardhanan

4.J.Ramya

5.L.Valarmathi

6.R.Rathnammal

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorarified mandamus to call for the records of the 1st respondent in sale certificate No.6217 of 2019 dated 30.04.2019 and quash the same and direct the 2nd respondent to confirm the auction in favour of the petitioner.

For Petitioner : Mr.N.Vignesh
for M/s.B.Nedunchezian

O R D E R

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

The above Writ Petition has been filed by the petitioner to issue a Writ of certiorarified mandamus to call for the records of the 1st respondent in respect of the Sale Certificate dated 30.04.2019 and to quash the same and to direct the 2nd respondent to confirm the auction in favour of the petitioner.

2.It is the case of the petitioner that the petitioner stood as a guarantor for the loan obtained by one Loganathan from the 2nd respondent. Since the borrower committed default in repaying the loan, the property was sold in auction in favour of the respondents 3 to 6 and a Sale Certificate dated 30.04.2019 was also issued in their favour. Now, the petitioner has filed the Writ Petition challenging the said Sale Certificate. The petitioner has filed the Writ Petition challenging the Sale Certificate without exhausting the alternate remedy available to him 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., cited 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.Since the petitioner has filed the Writ Petition without exhausting the alternate remedy by way of an appeal available to him under Section 17 of the SARFAESI Act, following the ratio laid down by the Supreme Court in the above referred judgments, we are not inclined to entertain the Writ Petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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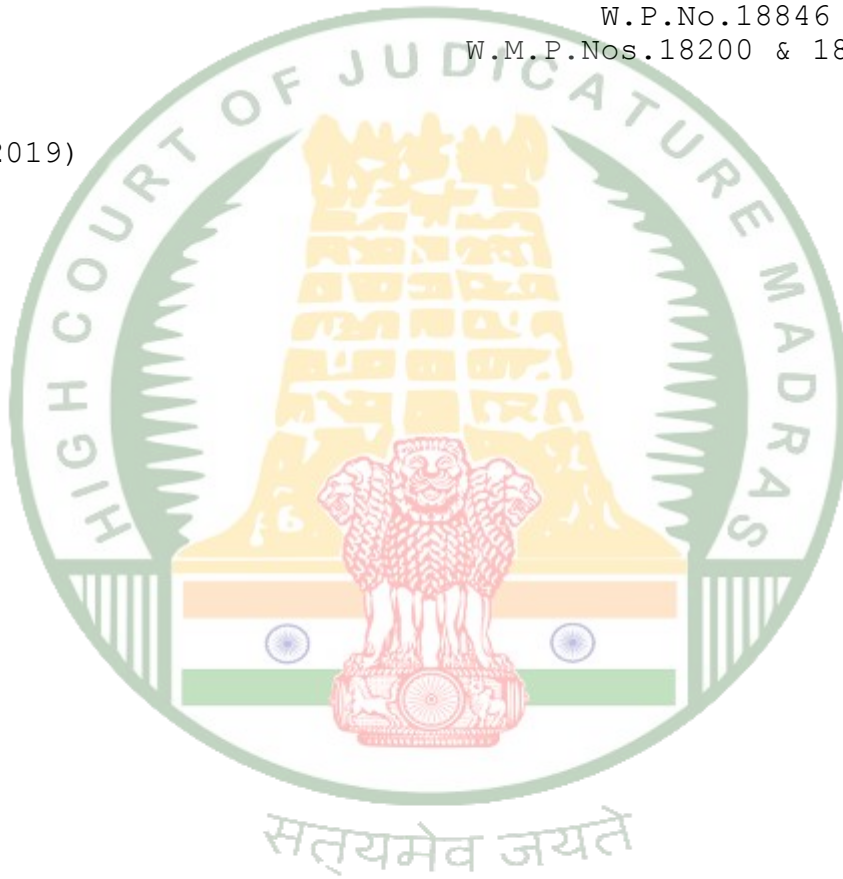
To

1.The Registrar,
Avinashi Road,
Tirupur District.

+1 CC to Mr.B. Nedunchezhiyan, Advocate sr 56222.

W.P.No.18846 of 2019 and
W.M.P.Nos.18200 & 18204 of 2019

SPD(CO)
SP(19/07/2019)



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