



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.18120 of 2019 and
W.M.P.Nos.17487, 17490 & 17492 of 2019

Sushil Kumar Chokhani

.. Petitioner

Vs.

1.The Authorized Officer,
UCO Bank, No.55 & 56, Sakthi Towers,
Vallipalayam III Street,
Tiruppur - 641 601.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for the records culminating sale notice dated 12.06.2019 issued by the respondent Bank fixing the sale on 28.06.2019 and quash the same pending disposal of the appeal now in AIR (SA). No.207 of 2019 on the file of the Debt Recovery Appellate Tribunal, Chennai.

For Petitioner : Mr.M.Aravind Subramaniam

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 certiorarified mandamus to call for the records relating to the sale notice dated 12.06.2019 issued by the respondent Bank fixing the sale on 28.06.2019 and to quash the same pending disposal of the appeal now in AIR.(SA).No.207 of 2019 on the file of the Debt Recovery Appellate Tribunal, Chennai.

2.Challenging the possession notice and sale notice dated 11.02.2019, the petitioner filed an appeal in S.A.No.124 of 2019 on the file of the Debts Recovery Tribunal, Coimbatore. In the said appeal, the petitioner took out an application in I.A.No.745 of 2019 seeking for interim stay. The Debts Recovery Tribunal dismissed the said application, against which, the petitioner preferred an appeal in AIR (SA).No.207 of 2019 before the Debt Recovery Appellate Tribunal, Chennai and the same is pending. While so, the respondent - Bank issued a sale notice dated 12.06.2019, which is being challenged by the petitioner in



this Writ Petition. When the sale notice has been issued by the respondent - Bank, the remedy open to the petitioner is to challenge the same under Section 17 of the SARFAESI Act.

3.The learned counsel appearing for the petitioner submitted that the petitioner can also file a petition for stay in respect of the sale notice dated 12.06.2019.

4.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.

5.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.

6.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. It is open to the petitioner to challenge the auction sale notice dated 12.06.2019 in accordance with law. No costs. Consequently, the connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar



To

1.The Authorized Officer,
UCO Bank,
No.55 & 56, Sakthi Towers,
Vallipalayam III Street,
Tiruppur - 641 601.

2.The Debts Recovery Appellate Tribunal
Chennai

+1 CC to Mr.M.Aravind Subramaniam, Advocate sr 52899.

W.P.No.18120 of 2019 and
W.M.P.Nos.17487, 17490 & 17492 of 2019

VBA(CO)
SP(01/08/2019)