

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM

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

W.P.No.18386 of 2019

S.Tamilselvi

.. Petitioner

Vs

1 The Authorised Officer
Asrec (India) Limited
Room No.3, III Floor
Wellington Estate
No.53 Ethiraj Salai
Egmore, Chennai - 8.

2 Faithful Engineers Pvt Ltd.
Rep by its Managing Director, B.Sekar
No.34 (Old No.17), Five Furlongs Road
Maduvinkarai, Guindy
Chennai.

3 B.Sekar

4 S.Kumaran

5 G.Sankaran

6 K.Bhuvaneswari

7 S.Rajeshwari

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records pertaining to the order dated 9.10.2017 in CrI.M.P.No.1528 of 2017 on the file of the Chief Metropolitan Magistrate, Allikulam, Chennai, and quash the same.

For Petitioner : Mr.D.R.Arun Kumar

ORDER

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

The above writ petition has been filed by the petitioner challenging the order dated 9.10.2017 in Crl.M.P.No.1528 of 2017 on the file of the Chief Metropolitan Magistrate, Chennai, passed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. When the petitioner has got efficacious alternate remedy by way of an appeal under Section 17 of the SARFAESI Act available to her before the Debts Recovery Tribunal, the petitioner chose to file a writ petition under Article 226 of the Constitution of India, which cannot be entertained.

3. It is settled position that if the aggrieved party has got alternate remedy available before the Debts Recovery Tribunal, the writ petition filed should not be entertained.

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 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.

6. Since the petitioner has filed the writ petition without exhausting the alternate remedy by way of an appeal available to her 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.

7. Further, in the case on hand, the petitioner has not explained the reason for laches in filing the writ petition.

Though the impugned order was passed as early as 9.10.2017, the petitioner has filed the writ petition only on 27.6.2019.

In these circumstances, we are not inclined to entertain the writ petition. Accordingly, the writ petition is dismissed. No costs. Consequently, W.M.P.Nos.17734 and 17738 of 2019 are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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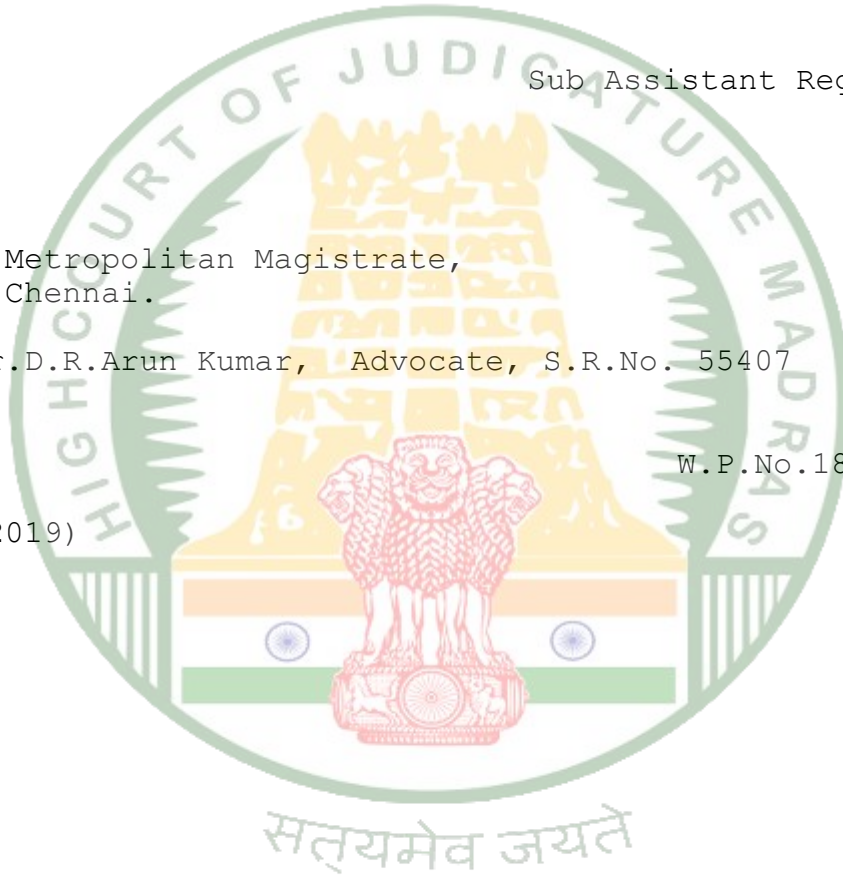
TO

The Chief Metropolitan Magistrate,
Adikulam, Chennai.

+1cc to Mr.D.R.Arun Kumar, Advocate, S.R.No. 55407

W.P.No.18386 of 2019

GJ II(CO)
GN(01/08/2019)



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