

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM

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

W.P.No.21376 of 2019

1.M/s.EL.Shaddai CNC,
Prop. W.Rajan
No.16, Township Colony,
Athipetkuppam,
Athipet, Chennai-600 058.

2.W.Rajan
3.Suseela

.. Petitioners

Vs

Authorised Officer,
Tamil Nadu Industrial Investment
Corporation Limited,
Tiruvallur Branch,
No.86, C & D, 2nd Main Road,
Ambattur Industrial Estate,
Chennai - 600 058.

.. Respondent

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a Writ of Declaration, declaring the sale held between 03.06.2019 and 25.06.2019, as indicated in the SMS dated 25.06.2019, sent by the respondent to the second petitioner, in respect of the property of the 3rd petitioner situated at New Survey No.207/3A (Now subdivided as Survey No.207/3A2), Valvachakoustram Village, Kalkulam Taluk, Kanyakumari District measuring 18 cents as invalid in law.

For Petitioners : Mr.N.Rajan

ORDER

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

The petitioner has filed the above writ petition to issue a writ of declaration, declaring the sale held between 03.06.2019 and 25.06.2019, as indicated in the SMS dated 25.06.2019 sent by the respondent to the petitioner as invalid.

2. In the present writ petition, the petitioners have challenged the sale held between 03.06.2019 and 25.06.2019 without exhausting the alternate remedy available to them under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, '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. The Supreme Court repeatedly held that the aggrieved party should file appeal before the Debts Recovery Tribunal under Section 17 of the Act challenging the SARFAESI proceedings and the writ petition filed circumventing such procedure should not be entertained.

6. In view of the dictum laid down by the Supreme Court, we are not inclined to entertain the writ petition. Accordingly, the writ petition is dismissed. No costs.

7. The learned counsel for the petitioners submitted that the petitioners may be permitted to approach the

respondent/Tamil Nadu Industrial Investment Corporation Limited for getting details with regard to the sale held between 03.06.2019 and 25.06.2019. In view of the request made by the learned counsel appearing for the petitioners, we make it clear that it is open to the petitioners to approach the respondent/Tamil Nadu Industrial Investment Corporation Limited for getting necessary details with regard to the sale held between 03.06.2019 and 25.06.2019.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

bbr
To:

The Authorised Officer,
Tamil Nadu Industrial Investment Corporation Limited,
Tiruvallur Branch,
No.86, C & D, 2nd Main Road,
Ambattur Industrial Estate,
Chennai - 600 058.

+1 CC to Mr.N.Rajan, Advocate sr 62821.

W.P.No.21376 of 2019

PPA(CO)
SP(13/08/2019)

सत्यमेव जयते

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