IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2019

CORAM :

The Hon'ble Mrs.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.DURAISWAMY

W.P. No.20245 of 2019

S.Gomatheeswaran .. Petitioner

-vs-

1.The Authorised Officer,
Branch Manager, Indian Overseas Bank,
Five Roads, Salem-636 004.

2.The Chief Manager,
Regional Office,
7/4, Ideal Garden Complex,
2^{nd} Floor, Five Roads,
Salem-4. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records with respect to the impugned notice dated 04.07.2019 issued by the 1^{st} respondent under Section 13(4) of the SARFAESI Act and quash the same.

For Petitioner : Mr.R.Nalliyappan

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

Heard Mr.R.Nalliyappan, learned counsel for the petitioner.

2. The petitioner has borrowed educational loan of Rs.8.00 lakhs from the second respondent. As the petitioner failed to repay the loan amount, the first respondent had issued possession notice dated 04.07.2019

under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'SARFAESI Act') to the petitioner. The petitioner is now seeking to quash the said possession notice.

3. As far as possession notice is concerned, the petitioner has efficacious alternate remedy of preferring an appeal before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

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., 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. In such view of the matter, we are not inclined to interfere with the impugned possession notice and the petitioner is relegated to the remedy of preferring appeal against the said notice.

7. With the above observation, the writ petition is disposed of. No costs. Consequently, W.M.P.Nos.19645 and 19647 of 2019 are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To,

1.The Authorised Officer,
Branch Manager, Indian Overseas Bank,
Five Roads, Salem-636 004.

2.The Chief Manager,
Regional Office,
7/4, Ideal Garden Complex,
2nd Floor, Five Roads,
Salem-4.

+1cc to Mr.R.Nalliyappan , Advocate SR.No. 61131

W.P.No.20245 of 2019

A.SK(14/08/2019)