

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No27914 & 27915 of 2014 and
M.P.Nos.1 and 2 of 2014 (4 MPs) &
32772 & 32774 of 2018

Mr.G.Tirumalvalavan

.. Petitioner in W.P.No.27914/2014

Mr.K.Chandrasekar

.. Petitioner in W.P.No.27915/2014

vs.

1 The Authorised Officer
131 Sidco Building,
GST Road, Guindy
Chennai-600 032

2 Indian Bank
Rep. by its Branch Manager
Guindy Branch, 131, Sidco Building
GST Road, Guindy
Chennai-600 032

3 M/s.Winstar Exim Pvt. Ltd.
Rep. by its Managing Director
Flat E , Second Floor
F47, 1st Main Road
Anna Nagar East, Chennai-600 098

4 Mr.Ganapathiraman

5 Mr.S.Ganesan

6 Mr.M.Senthilkumar

.. Respondents in both Wps

Writ Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the entire records pertaining to the impugned orders of demand notices dated 02.07.2014 and consequential order of possession notices dated 20.09.2014 passed by the 1st respondent and to quash the same.

For Petitioners : Mrs.V.Stalin (in both Wps)

For Respondents : Mr.R.Venkataramanan - for R1
(in both Wps) No appearance -for R2 & R4
Not Ready in Notice - R3 & R5
Deceased - R6

COMMON ORDER

(Order of the Court made by The Hon'ble Chief Justice
and M.DURAISWAMY,J.)

Since the issue involved in both the Writ Petitions are identical, the Writ Petitions are disposed of by this common order.

2. The petitioners have filed the above Writ Petitions to issue a Writ of Certiorari to call for the records pertaining to the impugned orders of demand notices dated 02.07.2014 and consequential orders of the possession notices dated 20.09.2014 passed by the 1st respondent and to quash the same.

3. The petitioners have challenged the notices issued under sections 13(2) and 13(4) of the SARFAESI Act in these Writ Petitions.

4. It is settled position that a party cannot challenge the notices issued under section 13(2) of the SARFAESI Act either before this Court or before the Debts Recovery Tribunal.

5. In respect of the possession notices issued under section 13(4) of the SARFAESI Act is concerned, the parties have got remedy by way of an appeal before the Debts Recovery Tribunal under section 17 of the SARFAESI Act.

6. The aggrieved party cannot file a Writ Petition under Article 226 of the Constitution of India without exhausting the alternative remedy available under section 17 of the SARFAESI Act.

7.1. The Hon'ble Supreme Court of India, in the judgments reported in 2018 (3) Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.], and 2018 (1) Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others] 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.

7.2 In a recent decision of the Supreme Court dated 05.10.2018 in ICICI Bank Limited v. Umakanta Mohapatra, Civil Appeal Nos.10251 - 10265 of 2018 arising out of SLP (C) Nos.16758 - 16772 of 2015, the Supreme Court has referred to the decision in Authorized Officer, State Bank of Travancore and Anr. vs. Mathew K.C., (2018) 3 SCC 85, 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI') and keep granting interim orders in favour of persons who are Non-Performing Assets. Further, the Apex 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.

8. The ratio laid down by the Hon'ble Apex Court in the above referred judgments is applicable to the present case.

9. In view of the ratio laid down by the Apex Court, we are not inclined to entertain the Writ Petitions. However, it is open to the petitioners to challenge the possession notices dated 20.09.2014, in accordance with law.

With these observations, the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Rj

To

1 The Authorised Officer
131 Sidco Building,
GST Road, Guindy
Chennai-600 032

2 The Branch Manager
Indian Bank
Guindy Branch
131, Sidco Building
GST Road, Guindy
Chennai-600 032

+2cc to Mr.V.Stalin, Advocate, S.R.No.5694 5695

W.P. No27914 & 27915 of 2014 and
M.P.Nos.1 and 2 of 2014 (4 MPs) &
32772 & 32774 of 2018

PM(CO)
GSP(08/02/2019)