IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.21476 of 2019 and
W.M.P.No.20682 of 2019

J.Shoukath Ali .. Petitioner

Vs.

1. The District Magistrate and Collector,
   Salem District - 636 006.

2. The Authorized Officer,
   Punjab National Bank,
   Asset Recovery Management Branch,
   No.448A, Dr.Nanjappa Road,
   Coimbatore - 641 001.

3. The Tahsildar,
   Salem West District - 636 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorari calling for the records of the 3rd respondent comprised in the order dated 18.06.2019 bearing ROC.No.28219/2017/C5 served on the petitioner on 20.06.2019 and all proceedings pursuant thereto and quash the same as illegal and arbitrary.

For Petitioner : Mr.S.Prabakaran, Senior Counsel for M/s.R.Ram Sundar

For Respondents : Mr.V.Jayaprakash Narayanan, Government Pleader (i/c) (R1 & R3)

O R D E R

(ORDER OF THE COURT WAS MADE BY M.DURAISWAMY, J.)

The petitioner, who is a guarantor, has filed the above Writ Petition challenging the order passed by the 1st respondent dated 18.06.2019 under Section 14 of the SARFAESI Act.

2.By order dated 18.06.2019, the 1st respondent , the District Magistrate and District Collector, Salem, nominated the Tahsildar, Salem West Taluk to take charge of the property with the assistance of Police and hand over the same to the 2nd respondent. Challenging this order, the petitioner has filed the Writ Petition.

3.Mr.S.Prabakaran, learned senior counsel appearing for the petitioner submitted that though the 2nd respondent filed an application under Section 14 of the SARFAESI Act as early as on 29.06.2017, the impugned order has been passed only on 18.06.2019 (i.e.) after a period of 22 months in violation of the mandatory provisions that the application under Section 14 of the Act should be disposed of within 60 days.

4.The theme of Section 14 of the SARFAESI Act provides for taking assistance of the District Magistrate or the Chief Metropolitan Magistrate in the process of taking possession of the secured assets of the borrower or guarantor by the secured creditor under Sub-Section 4 of Section 13 of the Act. The period of 60 days stipulated under proviso to Section 14(1)(ix) is only to the benefit of the secured creditor and definitely not to the benefit of the borrower or the guarantor. In order to take possession of the secured assets without delay, the Act has provided for 60 days time to the District Magistrate or the Chief Metropolitan Magistrate to dispose of the application filed under Section 14 of the Act. Therefore, the borrower or the guarantor cannot take advantage of the delay in disposing of the Section 14 application beyond 60 days. In these circumstances, the contention of the learned senior counsel for the petitioner cannot be accepted.

5.The next point is with regard to the maintainability of the Writ Petition. The petitioner has filed the Writ Petition without exhausting the alternate remedy available to him under Section 17 of the SARFAESI Act. When the petitioner has got alternate remedy to challenge the order passed by the 1st respondent dated 18.06.2019, without exhausting the same, he has filed the Writ Petition.

6.1.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.

6.2.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.

7.In these circumstances, since the petitioner has filed the Writ Petition without exhausting the alternate remedy, we are not inclined to entertain the Writ Petition. Accordingly, the Writ Petition is dismissed. However, it is open to the petitioner to challenge the impugned order dated 18.06.2019 in accordance with law. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The District Magistrate and Collector,
   Salem District - 636 006.

2. The Authorized Officer,
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   Asset Recovery Management Branch,
   No.448A, Dr.Nanjappa Road,
   Coimbatore - 641 001.

3. The Tahsildar,
   Salem West District - 636 001.

+1cc to Mr.V.Vedachalem, Advocate, S.R.No.69872
+1cc to the Government Pleader, S.R.No.70197

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BS(CO)
CS/10/09/2019