

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.21632 of 2019 and

W.M.P.No.20855 of 2019

Kavitha Nesomany Saroja

.. Petitioner

Vs.

1.The District Collector,
Collector Office, Singaravelar Maligai,
Chennai - 600 001.

2.The Tahsildar,
Taluk Office, Sholinganallore Taluk,
Kanchipuram District.

3.Punjab National Bank,
rep by its Authorized Officer & Chief Manager,
B.O: RH Road, 46-49,
Royapettah High Road,
Royapettah, Chennai - 600 014.

4.S.Balagi

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorari to call for the records in the proceedings Na.Ka.No.1881/2019/A1 dated .06.2019 by the 2nd respondent and quash the same.

For Petitioner : Mr.T.V.G.Kartheeban

For Respondents: Mr.S.Kamalesh Kannan,
Government Advocate (R1 & R2)

O R D E R

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

The above Writ Petition has been filed by the petitioner to issue a Writ of certiorari to call for the records in respect of the proceedings dated .06.2019 (01.07.2019) passed by the 2nd respondent and to quash the same.

2.The petitioner has challenged the proceedings under Section 14 of the SARFAESI Act. By order dated 27.0.2018, the 1st respondent allowed the Section 14 application and pursuant to the same, the impugned proceedings have been initiated by the 2nd respondent for taking possession of the property.

3.It is settled position that as against the proceedings initiated under Section 14 of the SARFAESI Act, the remedy open to the petitioner is to file a SARFAESI Application under Section 17 of the SARFAESI Act. The petitioner cannot circumvent the alternate remedy and file a Writ Petition.

3.1.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.

3.2.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.

4. 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. Accordingly, the Writ Petition is dismissed. However, it is open to the petitioner to challenge the impugned proceedings before the Debts Recovery Tribunal in accordance with law. No costs. Consequently, the connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The District Collector,
Collector Office, Singaravelar Maligai,
Chennai - 600 001.

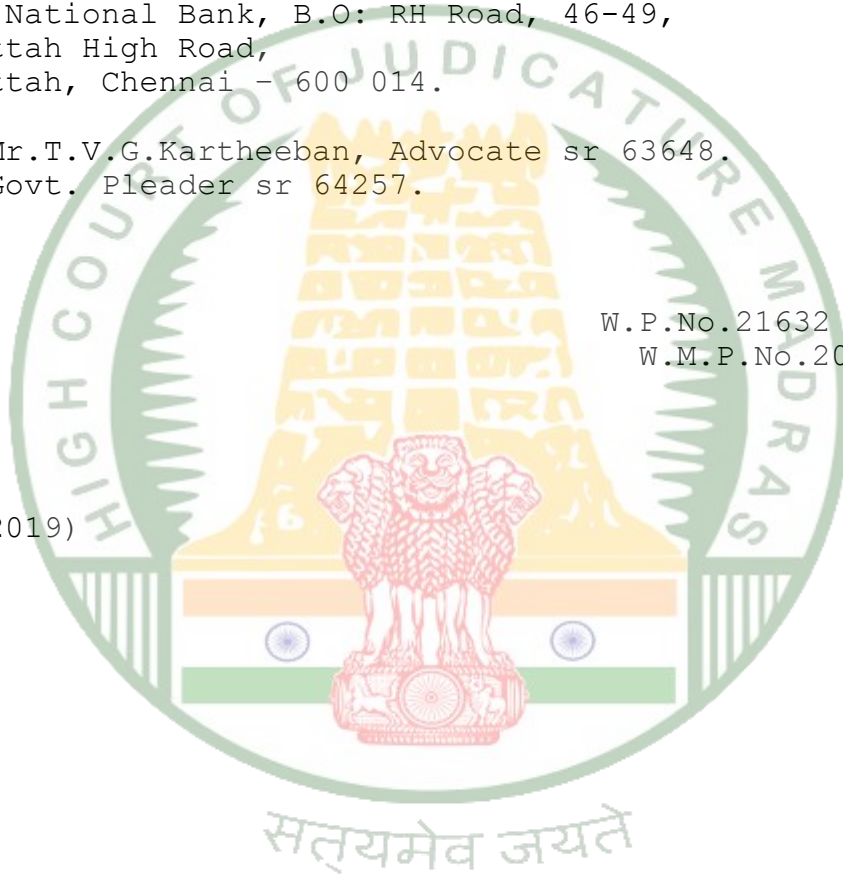
2.The Tahsildar,
Taluk Office, Sholinganallore Taluk,
Kanchipuram District.

3.The Authorized Officer & Chief Manager,
Punjab National Bank, B.O: RH Road, 46-49,
Royapettah High Road,
Royapettah, Chennai - 600 014.

+1 CC to Mr.T.V.G.Kartheeban, Advocate sr 63648.
+1 CC to Govt. Pleader sr 64257.

W.P.No.21632 of 2019 and
W.M.P.No.20855 of 2019

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



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