

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.24371 of 2019 and

W.M.P.No.24106 of 2019

S.Sumathi

.. Petitioner

Vs.

Indian Overseas Bank,
Tiruchengode Branch,
rep through its Senior Manager,
56 & 57, Theppakulam Street,
Sankari Road, Tiruchengode,
Namakkal District - 637 211.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of mandamus directing the respondent bank to forbear from causing the sale of the petitioner's property (land measuring 2400 sq.ft with building bearing Plot Nos.97 & 98, S.F.No.148/1C, Thakkavadi Village, Thiruchengode Taluk, Namakkal District) in pursuance of the auction sale notice dated 29.07.2019 either on 19.08.2019 or on subsequent dates.

For Petitioner : Ms.R.K.Sekina Reshma

सत्यमेव जयते

O R D E R

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

The petitioner has filed the above Writ Petition to issue a Writ of mandamus directing the respondent bank to forbear from causing the sale of the petitioner's property in pursuance of the auction sale notice dated 29.07.2019 either on 19.08.2019 or on subsequent dates.

2.The petitioner is a borrower, who had mortgaged the property with the respondent - Bank as a security for the due repayment of the loan. Since the petitioner committed default in repaying the loan, the respondent proceeded with the procedure

under the SARFAESI Act and issued the impugned e-auction sale notice dated 29.07.2019 for the sale of the mortgaged property. In these circumstances, the petitioner has filed the Writ Petition to restrain the respondent - Bank from causing the sale of the properties pursuant to the auction sale notice dated 29.07.2019. The petitioner has approached this Court without exhausting the alternate remedy available to her under Section 17 of the SARFAESI Act.

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.In these circumstances, 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. It is open to the petitioner to challenge the auction sale notice dated 29.07.2019 in accordance with law. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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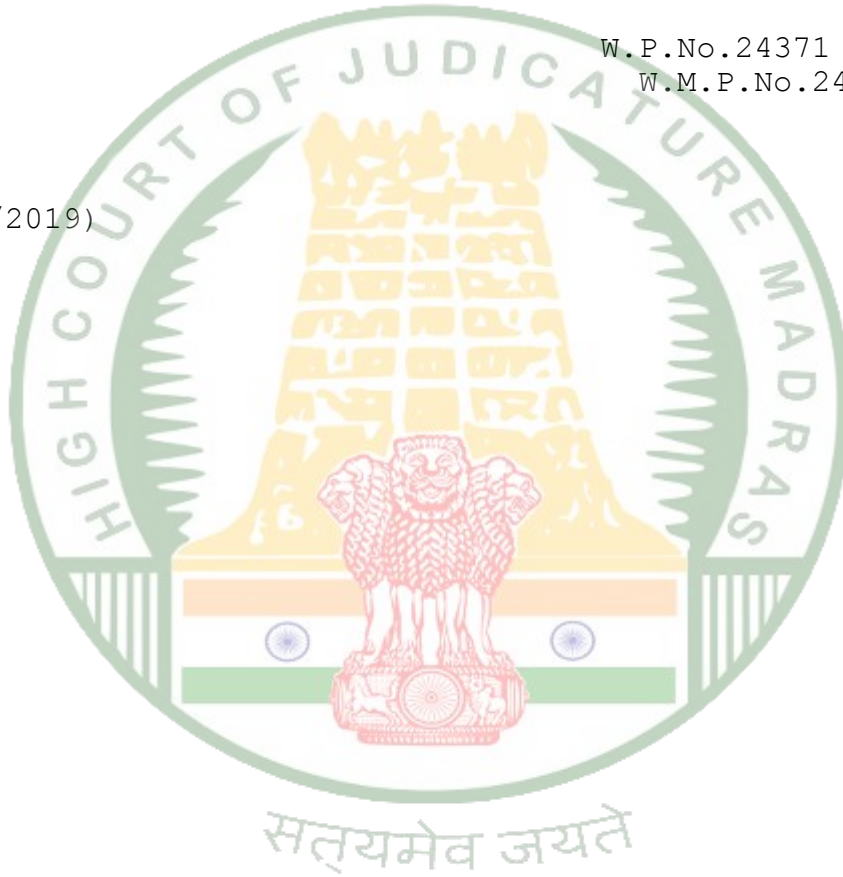
To

The Senior Manager,
Indian Overseas Bank,
Tiruchengode Branch,
56 & 57, Theppakulam Street,
Sankari Road, Tiruchengode,
Namakkal District - 637 211.

+lcc to Ms.R.K.Sekina Reshma, Advocate SR.No.70556

W.P.No.24371 of 2019 and
W.M.P.No.24106 of 2019

VG I(CO)
GMY(09/09/2019)



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