

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM :

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

AND

The Hon'ble Mr.JUSTICE M.DURAI SWAMY

W.P.No.24903 of 2019

R.Arumugasamy

.. Petitioner

-vs-

1.The District Collector,
Kancheepuram District,
Kancheepuram.

2.The Tahsildar,
Sholinganallur Tahsildar Office,
Sholinganallur.

3.The Authorised Officer,
M/s.United Bank of India,
Virugambakkam Branch,
No.83, Arcot Road,
Virugambakkam,
Chennai - 600 092.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records of second respondent dated 16.08.2019 in Na.Ka.No.8981/2014/A1 and quash the same.

For Petitioner

: MrR.Krishna Prasad

For Respondents

: Mr.S.N.Parthasarathi
Government Advocate
for respondent Nos.1 and 2

ORDER

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

Heard Mr.R.Krishna Prasad, learned counsel for the petitioner and Mr.S.N.Parthasarathi, learned Government Advocate for respondent Nos.1 and 2.

2. The petitioner is a borrower, who has taken a loan from M/s.United Bank of India, Virugambakkam Branch, Chennai. The petitioner defaulted in repaying the said loan, hence, notice dated 16.08.2019 was issued by the Tahsildar, Sholinganallur to the petitioner. In the said notice, it is stated that the District Collector had directed to take possession and handover the same to the Bank pertaining to the house and shop property situated in Old No.145, New No.115, Kasura Garden, East Coast Road, Neelankarai Village, Sholinganallur Taluk, Chennai District-600 041 under SARFAESI Act, 2002 since the petitioner viz., R.Arumugasamy had failed to repay the amount borrowed from M/s.United Bank of India, Virugambakkam Branch, Chennai-600 092. The petitioner is seeking quashing of the notice dated 16.08.2019 issued by the Tahsildar, Sholinganallur.

3. As against the notice dated 16.08.2019 issued to the petitioner, the petitioner has efficacious alternate remedy of approaching the Debts Recovery Tribunal. However, the petitioner has not exhausted the alternate remedy and has approached this Court directly.

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. The Supreme Court repeatedly held that the aggrieved party should file appeal before the Debts Recovery Tribunal under Section 17 of the Act challenging the SARFAESI proceedings and the writ petition filed circumventing such procedure should not be entertained.

7. Since the petitioner has got efficacious alternate remedy, we are not inclined to interfere and the petitioner is relegated to remedy of approaching the Debts Recovery Tribunal against the notice dated 16.08.2019 issued to him.

8. The writ petition is disposed of with the above observation. No costs. Consequently, W.M.P.No.24499 of 2019 is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To:

- 1.The District Collector,
Kancheepuram District,
Kancheepuram.
- 2.The Tahsildar,
Sholinganallur Tahsildar Office,
Sholinganallur.
- 3.The Authorised Officer,
M/s.United Bank of India,
Virugambakkam Branch,
No.83, Arcot Road,
Virugambakkam,
Chennai - 600 092.

+1cc to M/s.Sarvabhauman Associates sr.72088

W.P.No.24903 of 2019

pp(co)
nr 22/08/2019