

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2019

CORAM :

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

AND

The Hon'ble Mr.JUSTICE M.DURAI SWAMY

W.P. No.25528 of 2019
and W.M.P.No.25060 of 2019

Aparajitha Reger Flores,
Rep. by her P.O.A., J.Kalyana Sundaram. ... Petitioner

-VS-

1. State Bank of India,
Rep. by The Authorised Officer,
Stressed Asset Recoveery Branch,
177/1, Dr.Nanjappan Road,
Behind M.S.Pazhaniappan Nursing
Home, Coimbatore 641 018.

2.State Bank of India,
Rep. by its Manager,
Vadavalli Branch, Coimbatore. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records dated 13.8.2019 issued by 1st respondent alleging to have forfeited the initial amount paid by the petitioner, quash the same and to direct 1st respondent bank to admit Housing Loans released in favour of petitioner as per arrangement letters and consequent sanction letter dated 30.07.2019 in Home Loan - HL for NRI/PIO's dated 30.07.2019 and to issue the Sale Certificate in favour of Petitioner in respect of residential Flat Nos.C1, 2nd Floor & D1, 3rd Floor with built up area of 1351 Sq.ft. with undivided share of 632 sq.ft. each situate at Door No.292, "Venkatraman Residence", NGGO Colony in S.F.No.156/1, Kurudampalayam Village, Ashokapuram Panchayat, Coimbatore North Taluk, Coimbatore 641017, purchased by the petitioner in E-Auction Sale conducted by First Respondent Bank

on 30.4.2019 in respect of the Loan Account Nos.62335445767 and 62338567497 by crediting the housing loan amount disbursed by 2nd respondent branch to the auction sale amount.

For Petitioner : Mr.T.K.S.Gandhi

O R D E R

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

Heard Mr.T.K.S.Gandhi, learned counsel for the petitioner.

2.The petitioner is the auction purchaser and he has challenged the letter dated 13.08.2019 of the first respondent, wherein it is stated that e-auction is treated as cancelled and the amount paid by the petitioner is forfeited.

3.In our view, against the said communication, the petitioner has an efficacious alternate remedy of approaching the Debts Recovery Tribunal.

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.Following the ratio laid down by the Supreme Court in the above referred judgments, we are not inclined to entertain the writ petition and the petitioner is relegated to the remedy of approaching the Debts Recovery Tribunal seeking appropriate relief under Section 17 of the SARFAESI Act.

The writ petition is, accordingly, disposed of. No costs.
Consequently, W.M.P.No.25060 of 2019 is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

sra

To

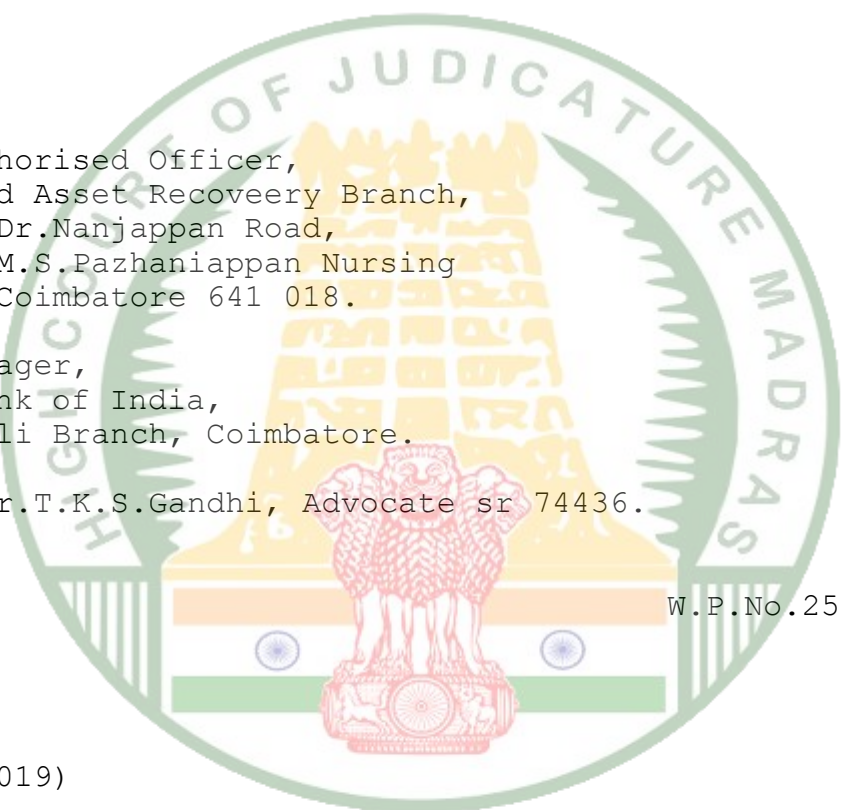
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Vadavalli Branch, Coimbatore.

+1 CC to Mr.T.K.S.Gandhi, Advocate sr 74436.

W.P.No.25528 of 2019

RP(CO)
SP(04/09/2019)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red lion capital on a base. The entire emblem is set against a background of a green and white striped field. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular border around the emblem. Below the emblem, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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