

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.9.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27960 of 2019
and
W.M.P.No.27547 of 2019

K.Senthil Balaji

..Petitioner

Versus

1. The Authorised Officer,
Indian Overseas Bank,
Knit City Branch, Tiruppur.
2. Tmt.Ramathal
3. Mythili
4. Subramaniam

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of declaration declaring that the sale deed 19.8.2019 between the 1st and 4th Respondent in respect of land with tiled roof and AC Sheet roof residential building at S.F.No.268, Site No.41, 42, Ward No.23, Door No.2 & 3, AITUC Colony, Karumarampalayam, Mannarai Village, Tiruppur, admeasuring 4800 sq.ft (11.01 cents) as null and void and contrary to law.

For Petitioner : Mr.S.Vinoth Kumar

ORDER

(Order of the court was made by Dr.VINEET KOTHARI, J.)

The Petitioner-Borrower has approached this court by way of present Writ Petition seeking to set aside the sale made by the Respondent Bank under the SARFAESI Act on 19.8.2019.

2. The ground raised by the petitioner in the present Writ Petition is that mandatory requirement of 30 days notice was not complied with by the Respondent-Bank in the present case.

3. The sale has already been taken place. However, the learned counsel for the Petitioner relied upon the decision of the Kerala High Court in the case of Babu v. Calicut Co-operative Urban Bank (2019(1) D.R.T.C. 274(Ker.)) wherein, the

Kerala High Court, referring to a decision in the case of Mathew Varghese v. Amritha Kumari ((2014) 5 SCC 610), has held that the 30 days' notice is mandatory.

4. Having heard the learned counsel for the petitioner, we are satisfied that since the petitioner has effective alternative remedy to lay a challenge to such a sale allegedly made without complying with the Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, he can avail the remedy by way of Application under Section 17 of the SARFAESI Act which permits any person aggrieved by the measures taken under Section 13 of the SARFAESI Act.

5. In view of the same, we dismiss the present Writ Petition with liberty to the Petitioner to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. No costs. The connected Miscellaneous Petition is also dismissed.

ssk.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Authorised Officer,
Indian Overseas Bank,
Knit City Branch, Tiruppur.

Copy to:-

The Debts Recovery Tribunal,
Coimbatore.

+1cc to Mr.S.Vinoth Kumar, Advocate, SR.No.81629
(dated : 26.09.2019)

W.P.No.27960/2019

Kak(20/09/2019)

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