IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.34395 of 2018 and
W.M.P.Nos.39967 & 39970 of 2018

1 R.Grace Lourds Buelah
2 Mrs.Maria Amel Panimayam

.. Petitioners

vs.

1 The Authorised Officer
Sriram Housing Finance Ltd.
Regd. Office No.123
Angappa Naicken Street
Chennai 600 001

2 Mrs. Asha Lukose
Authorised Officer
Sriram Housing Finance Ltd.
Level -III, Wockhardt Towers, East Wing
C-2, G Block, Bandra - Kurla Complex
Bandra (E), Mumbai 400 051

3 Mr.Mukesh
Manager
Sriram Housing Finance Ltd.
Luz Corner, Mylapore
Chennai

4 Mr. Saravanan
Collection Manager
Sriram Housing Finance Ltd.
Luz Corner, Mylapore
Chennai

5 Subramaniam .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the records of the respondent in notice u/s 13(2) of SARFAESI Act dated 23.07.2018 and the consequential Possession Notice u/s 13 (4) AA of SARFAESI Act dated 26.10.2018 and quash the same.

For Petitioner : Mr.S.Xavier Felix

O R D E R
(Order of the Court made by M.DURAISWAMY,J.)

The petitioners have filed the above Writ Petition to issue a Writ of Certiorari to call for the records of the 1st respondent pertaining to the notice dated 23.07.2018 issued under section 13(2) of SARFAESI Act and the consequential Possession Notice dated 26.10.2018 issued under section 13(4) AA of SARFAESI Act and to quash the same.

2. Since the petitioners have got remedy by way of an appeal under section 17 of the SARFAESI Act before the Debts Recovery Tribunal challenging Section 13(4) notice, the present Writ Petition is not maintainable.

3.1. The Hon'ble Supreme Court of India, in the judgments reported in 2018 (3) Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.], and 2018 (1) Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others] 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 dated 05.10.2018 in ICICI Bank Limited v. Umakanta Mohapatra, Civil Appeal Nos.10251 - 10265 of 2018 arising out of SLP (C) Nos.16758 - 16772 of 2015, the Supreme Court has referred to the decision in Authorized Officer, State Bank of Travancore and Anr. vs. Mathew K.C., (2018) 3 SCC 85, 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI') and keep granting interim orders in favour of persons who are Non-Performing Assets. Further, the Apex 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. The ratio laid down by the Hon'ble Apex Court in the above referred judgments is applicable to the present case.

5. Since the petitioners have filed the Writ Petition directly without exhausting the alternate remedy available to them under section 17 of the SARFAESI Act before the Debts Recovery Tribunal, we are not inclined to entertain the Writ

Petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

Rj

1. The Debts Recovery Tribunal
   Chennai.

+1 CC to Mr.S.Xavier Felix, Advocate sr 291.

W.P. No.34395 of 2018 and
W.M.P.Nos.39967 & 39970 of 2018

CA(CO)
SP(06/02/2019)