



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2019

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P.(MD).No.5531 of 2019

and

W.M.P.(MD).No.4380 of 2019

S.Kala

... Petitioner

Vs.

State Bank of India,
through its Chief Manager,
Stressed Assets Recovery Branch,
No.8, First Floor,
Dr.Ambedkar Road,
Madurai 625 020.

... Respondent

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus forbearing the respondent from invoking the provisions of the SARFAESI Act as against the properties comprised in R.S.No.687/1B and R.S.No.687/1B3 to an extent of 1 Acre 66 cents of Nilaiyur I Bit Village, Thirupparankundram Taluk, Madurai District, till the right of the petitioner over the property referred in O.A.No.254 of 2018 on the file of the Debt Recovery Tribunal, Madurai is finally decided.

For Petitioner : Mr.R.Aravindan

O R D E R

(Order of the Court was made by **K.KALYANASUNDARAM,J.**)

The writ petition has been filed for issuance of a writ of Mandamus forbearing the respondent from invoking the provisions of SARFAESI Act as against the properties comprised in R.S.No.687/1B and R.S.No.687/1B3 to an extent of 1 Acre 66 cents of Nilaiyur I Bit Village, Thirupparankundram Taluk, Madurai District, till the right of the petitioner over the property referred in O.A.No.254 of 2018 on the file of the Debt Recovery Tribunal, Madurai is finally decided.

2. Mr.R.Aravindan, learned counsel for the petitioner would state that the petitioner's father stood as a guarantor for the loan availed by M/s. Yogam Enterprises and for the default made by types of the petitioner borrower, the Bank has also initiated proceedings to recover the amount before the Debt Recovery Tribunal.



3. According to the learned counsel for the petitioner, the Bank instead of proceeding against the principal borrower and the properties of the principal borrower, has attempted to invoke the provisions of SARFAESI Act to attach the properties of his father in which the petitioner is having right. It is also contended that a suit has been filed before the Civil Court and an application filed by the petitioner before the DRT is also pending.

4. The Hon'ble Supreme Court, in a recent judgment reported in **2018 SCC Online SC 2349 (ICICI Bank Limited vs. Umakanta Mohapatra)**, has held as follows:

"4. The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows:-

"18. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd., (1997) 6 SCC 450, observing :-

"32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.""

5. In the light of the recent judgment of the Supreme Court, this writ petition is dismissed as not maintainable with liberty to work out the remedy before the civil Court in pending proceedings and the Debt Recovery Tribunal. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar (CS)

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To

State Bank of India,
through its Chief Manager,
Stressed Assets Recovery Branch,
No.8, First Floor,
Dr.Ambedkar Road,
Madurai 625 020.

+1CC TO MR.R.ARAVINDAN, Advocate Sr. No. 53186

W.P. (MD) .No.5531 of 2019
08.03.2019

TR (03.04.2019) 3P 3C