



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2019

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.P. (MD) .No.6782 of 2019
and
W.M.P. (MD) .No.5424 of 2019

Christ M.Miller

... Petitioner

Vs.

1. The Branch Manager,
Tamil Nadu Mercantile Bank Limited,
Marthandam Branch,
Marthandam,
Kanyakumari District.
2. The Authorised Officer,
Tamil Nadu Mercantile Bank Limited,
Marthandam Branch,
Marthandam,
Kanyakumari District.
3. A.John Leon Singh
4. The Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.

... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus forbearing the first and second respondents herein or his authorised representative or agents from in any manner invoking power under the SARFAESI Act for bringing the properties of the petitioner as per documents of transaction dated 09.01.2018 and 09.04.2018 between the respondents 1 and 2 herein till the criminal complaint in Crime No.4 of 2019 on the file of fourth respondent against the respondents 1 and 3 herein attains finality.

For Petitioner
For R1 & R2
For R4

: Mr.S.Srinivasaraghavan
: Mr.A.R.M.Ramesh
: Mr.Aayiram K.Selvakumar
Additional Government Pleader

**ORDER**

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

Heard Mr.S.Srinivasaraghavan, learned counsel for the petitioner, Mr.A.R.M.Ramesh, learned counsel for the respondents 1 and 2 and Mr.Aayiram K.Selvakumar, learned counsel for the fourth respondent.

2. This writ petition has been filed praying for issuance of a writ of Mandamus forbearing the respondents 1 and 2 or his authorised representative or agents from in any manner invoking power under the SARFAESI Act for bringing the properties of the petitioner, as per documents of transaction dated 09.01.2018 and 09.04.2018 between the respondents 1 and 2 herein till the criminal complaint in Crime No.4 of 2019 on the file of fourth respondent against the respondents 1 and 3 herein attains finality.

3. The learned counsel for the petitioner would argue that based on the complaint of the petitioner, a criminal case was registered against the Manager of the Bank in Crime No.4 of 2019 by the District Crime Branch, Nagercoil and till a finality is reached in the criminal case, the respondent Bank has no authority to initiate proceedings under SARFAESI Act.

4. The learned counsel for the respondents would submit that the writ petition itself is not maintainable, in view of the latest judgment of the Hon'ble Supreme Court reported in **2018 SCC Online SC 2349 (ICICI Bank Limited vs. Umakanta Mohapatra)**. In the above decision, it has been 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."

<https://hcservices.courts.gov.in/hcservices/>
In view of the dictum laid down by the Apex Court, the writ petition is dismissed as not maintainable with liberty to the petitioner to approach the appropriate forum for redressal of his



grievances. No costs. Consequently, the connected Miscellaneous Petition is also closed.

sd/
Assistant Registrar

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/True Copy/

Sub Assistant Registrar

To

1. The Branch Manager,
Tamil Nadu Mercantile Bank Limited,
Marthandam Branch,
Marthandam,
Kanyakumari District.
2. The Authorised Officer,
Tamil Nadu Mercantile Bank Limited,
Marthandam Branch,
Marthandam,
Kanyakumari District.
3. The Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.

+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate (SR-61990[F] dated 24/04/2019)
+1 CC to Mr.A.R.M.RAMESH, Advocate (SR-62276[F] dated 24/04/2019)
+1 CC to SPL GP (SR-62469[F] dated 25/04/2019)

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