



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2019

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) .No.6950 of 2019
and
W.M.P. (MD) .Nos.5541 and 5542 of 2019

1. Dr.Subburam
2. Nirmal Bharathi
3. Sabrish
4. Sindya
5. Siddarth Bharathy
6. M/s. Mahatma Brain and Spine Centre,
represented by its Dr.Subburam,
430, Anandha Maaligai,
K.K.Nagar, Madurai 625 020.
7. M/s. Mahatma Brain and Spine Centre,
represented by its Dr.Subburam,
Plot No.297, East 3rd Cross Street,
K.K.Nagar,
Madurai 625 020.

... Petitioners

Vs.

- 1.The Authorised Officer,
HDB Financial Services Limited,
4th Floor, Royal Towers,
58/2, Greams Road,
Chennai.
2. The District Collector,
Madurai,
Madurai District.

... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of impugned sale notice through tender cum public auction advertisement issued by the first respondent, on 29.11.2018 and quash the same.

For Petitioners

: Mr.N.Balakrishnan

For R2/

: Mr.V.R.Shanmuganathan

Special Government Pleader

**ORDER**

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

Heard Mr.N.Balakrishnan, learned counsel for the petitioners and Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the second respondent.

2. By consent, the writ petition itself is taken up for final disposal.

3. This writ petition has been filed challenging the sale notice dated 29.11.2018, issued by the first respondent under SARFAESI proceedings.

4. The learned counsel for the petitioners would state that the action of the first respondent is contrary to the provisions of the relevant Act. It is further stated that the petitioners are running the hospital and if the property is sold, the same would lead to serious consequences of wide ramification.

5. The Hon'ble Apex Court, in a recent judgment reported in **2018 SCC Online SC 2349 (ICICI Bank Limited vs. Umakanta Mohapatra)**, has held that the writ petition is not maintainable. The relevant paragraphs would run thus:

"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."

6. In the light of the above decision of the Hon'ble Supreme Court, the writ petition is dismissed as not maintainable with



liberty to the petitioner to approach the Debt Recovery Tribunal for redressal of their grievances. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Authorised Officer,
HDB Financial Services Limited,
4th Floor, Royal Towers,
58/2, Greams Road,
Chennai.
2. The District Collector,
Madurai,
Madurai District.

+1 CC to MR.N.BALAKRISHNAN, Advocate (SR-57065[F] dated
27/03/2019)

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