



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2019

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

W.P. (MD) .No.7388 of 2019
and
W.M.P. (MD) .No.5905 of 2019

1. M.Mahalingam
2. M.Jeyam

... Petitioners

Vs.

1.The District Magistrate and District Collector,
O/o. The District Collectorate,
Karur.

2.The Revenue Divisional Officer,
Karur.

3.The Authorised Officer,
Lakshmi Vilas Bank,
Vengamedu Branch,
533, Salem Main Road,
Vengamedu,
Karur 639 006.

... 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 pertaining to the impugned order passed by the first respondent in his proceedings in Rc.No.D4/16506/2018, dated 04.03.2019 and to quash the same as illegal, arbitrary and in violation of principles of natural justice.

For Petitioners : Mr.S.Saravanan
For R1 & R2 :
Mr.V.R.Shanmuganathan
Special Government Pleader

**O R D E R**

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

Heard Mr.S.Saravanan, learned counsel for the petitioners and Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents 1 and 2.

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

3. This writ petition has been filed challenging the order passed by the District Collector in a SARFAESI proceedings for recovery of possession under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, dated 04.03.2019.

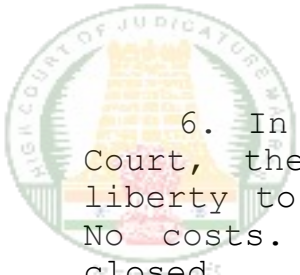
4. According to the learned counsel for the petitioners, a SARFAESI appeal was already filed challenging the auction sale and the order of stay is in force till 08.03.2019, however, in the mean while, the first respondent has passed the impugned order without proper application of mind. It is also stated that the petitioners are running a textile shop in which more than hundred employees are working.

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 petitioners to approach the Debt Recovery Tribunal. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The District Magistrate and District Collector,
O/o. The District Collectorate,
Karur.

2.The Revenue Divisional Officer,
Karur.

1CC TO MR. R. ARAVIND RAJ, ADVOCATE SR 57432
1CC TO MR. PALA.RAMASAMY, ADVOCATE SR 57789
1CC TO THE SPL GOVT PLEADER SR 57760

DS
15/04/2019
3P 6C

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