



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2019

CORAM:

THE HON'BLE Mr. JUSTICE K.KALYANASUNDARAM  
AND

THE HON'BLE Mrs. JUSTICE R.THARANI

W.P. (MD) No.10850 of 2018

and

W.M.P. (MD) Nos.9984 to 9986 of 2018

T.G.Prema Jaya

... Petitioner

Vs.

1.The Regional Director,  
Reserve Bank of India,  
South Zone,  
No.16, Rajaji Salai,  
Chennai - 01.

2.The Authorized Officer,  
Tamil Nadu Mercantile Bank Ltd.,  
Palliyadi Branch,  
Kanyakumari District.

3.Abarna Traders

4.T.Kumar

5.Ajitha

6.R.Gomathi

7.R.Selvaraj

... Respondents

**PRAYER:** The petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 2nd respondent's notice for sale dated 06.03.2018 for item No.2 of the property and quash the same as being illegal, unreasonable and unconstitutional and consequently, direct the 2nd respondent not to sell the petitioner's property.

For Petitioner

: Mr.H.Velvadhas

For Respondents

: Mr.N.Dilip Kumar for R2

No appearance for R1, 3, 4 to 7

**ORDER**

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

This Writ petition has been filed, challenging the sale notice issued by the second respondent dated 06.03.2018, in and by which, the second item of the property was brought for public auction on 10.04.2018.



2.Mr.H.Velavadhas, learned counsel for the petitioner would state that the second item of the property was originally belonged to the petitioner's father and after his demise, when the other legal heirs are entitled for share, his mother settled the property in favour of one of his sisters and the said settlement is challenged by the petitioner in O.S.No.53 2018 before the Principal District Munsif Court, Padmanabhapuram and hence, the mortgaged is invalid.

3.Mr.N.Dilip Kumar, learned standing counsel for the second respondent would state that pursuant to the sale notice dated 06.03.2018, an auction was conducted on 28.03.2018 and the second item of property was sold for Rs.8.5 lakhs and a sale certificate was also issued and the same was also registered as document No.1199 of 2018. Even after giving credit of the said sale amount, still there is outstanding amount of Rs.36 lakhs.

4.The Hon'ble Apex Court in **ICICI Bank Limited V. Umakanta Mohapatra, Civil Appeal Nos. 10251 to 10265 of 2018 arising out of SLP (C) Nos.16758 to 16772 of 2015** has held as follows:

"Despite several judgments of this Court, including a judgment by Hon'ble Mr.Justice Navin Sinha, as recently as on 30.01.2018, in Authorized Officer, State Bank of Travancore and Anr., Vs. Mathew K.C.(2018) 3 SCC 85, the High Courts continue to entertain matters which arise under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are Non performing Assets (NPAs).

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., Vs. Prem Heavy Engineering Works (P)Ltd., and another 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."



The Writ petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside."

5. In view of the judgment of the Hon'ble Apex Court, we are not able to entertain the present Writ petition. Hence, the Writ petition is dismissed as not maintainable. No costs. Consequently, connected W.M.Ps. are closed.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Regional Director,  
Reserve Bank of India,  
South Zone,  
No.16, Rajaji Salai,  
Chennai - 01.

2. The Authorized Officer,  
Tamil Nadu Mercantile Bank Ltd.,  
Palliyadi Branch,  
Kanyakumari District.

+1CC TO MR.N.DILIP KUMAR, Advocate Sr. No. 59110

**W.P. (MD) No.10850 of 2018**  
**03.04.2019**

KG(CO)

TR (06.05.2019) 3P 4C