



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.04.2019

CORAM:

THE HON'BLE Mr. JUSTICE K.KALYANASUNDARAM
AND
THE HON'BLE Mrs. JUSTICE R.THARANI

W.P. (MD) No.11382 of 2018
and
W.M.P. (MD) No.10368 of 2018

Daniel Rajamani

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Revenue Divisional Officer,
Tenkasi,
Tirunelveli District.

3.The Authorized Officer,
M/s.REPCO Home Finance Ltd.,
Tenkasi,
Tirunelveli District.

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 2nd respondent in his proceedings Roc.A2/ 4341/2016 dated 19.04.2018 and quash the same and consequently, direct the 3rd respondent to discharge the loan in account Nos.1911820291358, 1911811291357 and release the petitioner's documents after receiving proper loan amount.

For Petitioner

: Mr.G.Gomathi Sankar

For Respondents

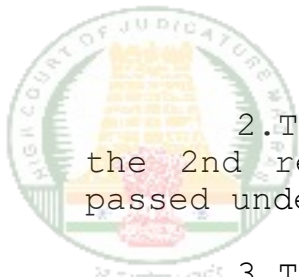
: Mr.Aayiram K.Selvakumar, AGP for R1
& R2

Mr.B.Rajesh Saravanan for R3

ORDER

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

Heard Mr.G.Gomathi Sankar, learned counsel for the petitioner, Mr.Aayiram K.Selvakumar, learned Additional Government Pleader appearing for the respondents 1 & 2 and Mr.B.Rajesh Saravanan, learned counsel for the third respondent.



2.This Writ petition has been filed challenging the order of the 2nd respondent / Revenue Divisional Officer dated 19.04.2018 passed under Section 14 of SARFAESI Act, 2002.

3.The learned counsel for the petitioner would argue that the possession notice issued earlier was challenged by the petitioner before the Debts Recovery Tribunal in S.A.No.43 of 2015 and when the said appeal is pending, the present impugned notice has been issued to take physical possession of the petitioner's residential house. It is also contended that the respondent / Bank is charging penal interest.

4.Per contra, Mr.A.Rajesh Saravanan, learned counsel for the third respondent would state that the conditional order passed by this Court dated 01.06.2018 has not been complied with by the petitioner and further, the Writ petition is not maintainable.

5.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."

6. 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 with liberty to the petitioner to approach the Debts Recovery Tribunal. No costs. Consequently, connected W.M.P. is closed.

Sd/-

Assistant Registrar (Crl side)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The District Collector,
Tirunelveli District,
Tirunelveli.
2. The Revenue Divisional Officer,
Tenkasi,
Tirunelveli District.
3. The Authorized Officer,
M/s.REPCO Home Finance Ltd.,
Tenkasi,
Tirunelveli District.

+1cc to Mr.G.GOMATHISANKAR, Advocate, SR.No. 59072
+1cc to Mr.B.RAJESH SARAVANAN, Advocate, SR.No. 59249
+1cc to M/s.Special Government Pleader, SR.No. 59305

W.P. (MD) No.11382 of 2018
04.04.2019

NBJ

KK/SAR/08.05.2019/ 3P- 7C