



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2019

CORAM:

**THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE MR.JUSTICE T.RAVINDRAN**

W.P. (MD) No.26793 of 2019

and

W.M.P. (MD) No.23155 of 2019

K.Jahir Hussain

... Petitioner

-VS-

The Authorized Officer
Indian Bank
Bodinayakanur Branch
No.13 Urumikaran Street
Bodinayakanur
Theni District

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records relating to the impugned demand notice dated 29.07.2019, the possession notice dated 10.10.2019 and the consequential sale notice / E Auction notice dated 13.11.2019, issued by the respondent and quash the same as illegal.

For Petitioner: Mr.M.Mahaboob Athiff
for M/s.Ajmal Associates

For Respondent: Mr.M.Senthil Kumar

O R D E R

[Order of the Court was made by M.DURAI SWAMY, J.]

The petitioner, who is the guarantor, has filed the above writ petition challenging the demand notice dated 29.07.2019, issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "the SARFAESI Act"), the possession notice dated 10.10.2019, issued under Section 13(4) of the SARFAESI Act and the sale notice / e-auction notice dated 13.11.2019, issued by the respondent - Bank.



2. It is settled position that the aggrieved party cannot challenge the demand notice issued under Section 13(2) of the SARFAESI Act. The cause of action to challenge the SARFAESI proceedings would arise only after issuance of the possession notice under Section 13(4) of the SARFAESI Act. It is also settled position that the aggrieved party should only file an appeal before the Debts Recovery Tribunal challenging the SARFAESI proceedings.

3. The Honourable Supreme Court in the cases of ***The Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.***, reported in (2018) 3 SCC 85 and ***Agarwal Tracom Private Limited Vs. Punjab National Bank and others***, reported in (2018) 1 SCC 626 has held that the aggrieved parties cannot challenge the SARFAESI proceedings directly by filing a writ petition under Article 226 of the Constitution of India without exhausting the appeal remedy available to them.

4. In a recent decision of the Honourable Supreme Court in ***ICICI Bank Limited v. Umakanta Mohapatra***, reported in 2018 SCC Online SC 2349, the Apex Court has referred to the decision in the case of ***Mathew K.C.***, referred supra, and observed that despite several judgments, including the decision in the case of ***Mathew K.C.***, referred supra, the High Courts continue to entertain matters which arise under the SARFAESI Act and keep granting interim orders in favour of persons who are Non-Performing Assets. Further, the Honourable Supreme Court has held that writ petition filed by the aggrieved party, without exhausting the statutory remedy available under the SARFAESI Act and Recovery of Debts Due to Banks and Financial Institutions Act, is not maintainable.

5. In such view of the matter, we are not inclined to entertain the writ petition and it is open to the petitioner to challenge the sale notice dated 13.11.2019, issued by the respondent - Bank, before the Debts Recovery Tribunal, in accordance with law.

6. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)



TO
The Section Officer,
E.R.Section, Madurai Bench of Madras High Court,
Madurai.

(Return the original papers to the petitioner forthwith, after retaining a photocopy of the same in the bundle.)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-105433[F] dated 17/12/2019)

+1 CC to M/s.M.SENTHILKUMAR, Advocate (SR-105448[F] dated 17/12/2019)

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KM(CO)
TR(17.12.2019) 3P 4C