



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2019

CORAM

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

**W.P. (MD)No.26914 of 2019
and
W.M.P. (MD)No.23258 of 2019**

A.Masthan Ali

... Petitioner

Vs.

1.The Authorized Officer,
Axis Bank,
Retail Asset Centre, Kodambakkam,
Chennai-600 024.

2.The Axis Bank Limited,
represented by its Manager,
No.61/4B, 1st Floor, Pattu Arcade,
Bye-Pass Road, Ram Nagar,
Madurai-625 016.

... Respondents

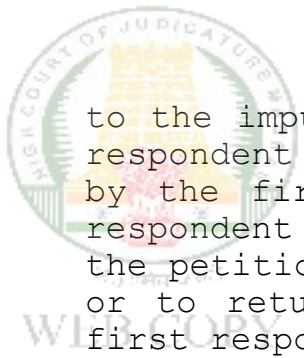
Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned communication dated 04.05.2018 issued by the second respondent and consequential impugned order under Letter No.Nil dated 17.10.2019 passed by the first respondent and quash the same and directing the first respondent to receive the balance sale price of Rs.13,98,500/-from the petitioner after confirming the sale in favour of the petitioner; or to return the sum of Rs.7,27,500/- the amount forfeited by the first respondent, along with its interest to the petitioner.

For Petitioner : Mr.K.R.Laxman
for Mr.R.Uvabalan

ORDER

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

The petitioner has filed the above writ petition to issue a writ of certiorarified mandamus to call for the records pertaining



to the impugned communication dated 04.05.2018 issued by the second respondent and consequential impugned order dated 17.10.2019 passed by the first respondent and quash the same and direct the first respondent to receive the balance sale price of Rs.13,98,500/- from the petitioner after confirming the sale in favour of the petitioner or to return the sum of Rs.7,27,500/- which was forfeited by the first respondent along with interest.

2. The petitioner is the auction purchaser, who was declared as the successful bidder in the auction held on 16.02.2018. The petitioner had paid a sum of Rs.7,27,500/- (Rupees Seven Lakhs Twenty Seven Thousand and Five Hundred only) as contemplated under Rule 9 (3) of the Security Interest (Enforcement) Rules, 2002. However, the petitioner has not paid the balance 75% within the period of fifteen days as stipulated in Rule 9(4) of the Rules. In such circumstances, the respondent Bank had forfeited the amount paid by the petitioner as per Rule 9(5) the Rules. Challenging the letter dated 17.10.2019 passed by the first respondent, the petitioner has filed the above writ petition.

3. When the petitioner has got alternative remedy by way of an appeal under Section 17 of the SARFAESI Act, without exhausting the same, the writ petition has been filed under Article 226 of the Constitution of India.

4. 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.

5. 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.

6. In such view of the matter, we are not inclined to entertain the writ petition and accordingly, the Writ Petition is



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dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (crl.side)

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Sub Assistant Registrar(CS)

Ssl

+1 CC to Mr.M.DINESH HARI SUDARSAN, Advocate (SR-106341[F] dated 20/12/2019)

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