



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2020

CORAM:

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

W.P. (MD) No.3344 of 2020

and

W.M.P. (MD) Nos.2802 & 2803 of 2020

M/s.Jayam Silks
represented by its Proprietor
Jeyam (aged about 48 years)
S/o.Mahalingam
No.443/N, No.850-862
Jawahar Bazaar
Karur-639 002

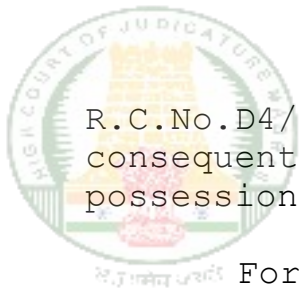
... Petitioner

-vs-

- 1.The Lakshmi Vilas Bank Ltd.,
by its Authorized Officer
Vengamedu Branch
533, Salem Main Road
Vengamedu
Karur-639 006
- 2.The District Collector and
District Magistrate
Karur District
- 3.The Revenue Divisional Officer
Karur
- 4.The Joint-I Sub Registrar
Karaikudi
Sivagangai District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records of the second respondent District Collector culminating in taking possession of the petitioner's property at M/s.Jayam Silks, No.443/N, No.850-852, Jawahar Bazaar, Karur-639 002, by virtue of and pursuant to order made in second respondent proceedings



R.C.No.D4/16506/2018, dated 04.03.2019, quash the same and consequently issue direction to the respondents to restore the possession of the said property to the petitioner.

For Petitioner : Mr.Sukumar Rajulu

For Respondents : Mr.C.Jawahar Ravindran for R1
Mr.V.R.Shanmuganathan
Special Government Pleader for R2 to R4

O R D E R

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

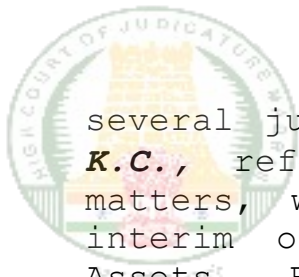
The petitioner Firm has filed the above writ petition to issue a writ of certiorarified mandamus to call for the records of the second respondent / District Collector culminating in taking possession of their property at M/s.Jayam Silks, No.443/N, No.850-852, Jawahar Bazaar, Karur-639 002, pursuant to the order, dated 04.03.2019, passed by the second respondent, to quash the same and consequently, to issue a direction to the respondents to restore the possession of the said property with the petitioner.

2. Admittedly, the petitioner is a borrower and the first respondent is the secured creditor. The first respondent had filed an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "the SARFAESI Act"), before the second respondent and the second respondent has passed the impugned order, dated 04.03.2019.

3. The petitioner has filed the above writ petition without exhausting the alternative remedy available to them under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal.

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 the 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 view of the ratio laid down by the Honourable Supreme Court in the above cited decisions, we are not inclined to entertain the writ petition.

7. At this juncture, Mr.V.R.Shanmuganathan, learned Special Government Pleader, who takes notice for the respondents 2 to 4 submitted, that the official respondents had already taken possession of the secured assets from the petitioner.

8. It is also brought to the notice of this Court by the learned counsel appearing for the first respondent that the sole proprietor of the petitioner Firm, namely, Ms.M.Jeyam and one Mr.M.Mahalingam have already filed a writ petition in W.P.(MD) No.7388 of 2019 before this Court challenging the very same order, dated 04.03.2019, issued by the second respondent and the Honourable Division Bench of this Court, by order dated 28.03.2019, dismissed the writ petition as not maintainable with liberty to the petitioners therein to approach the Debts Recovery Tribunal. However, the petitioner has suppressed the factum of the dismissal of the earlier writ petition (i.e. W.P.(MD) No.7388 of 2019) in the present writ petition. When the petitioner has deliberately suppressed the dismissal of the earlier writ petition (i.e. W.P.(MD) No.7388 of 2019) in the present writ petition, we are inclined to dismiss the present writ petition with cost.

9. Accordingly, the writ petition is dismissed with a cost of Rs.10,000/- (Rupees ten thousand only) payable by the petitioner to the 1st respondent Bank within two weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To:

- 1.The District Collector and
District Magistrate,
Karur District.
- 2.The Revenue Divisional Officer,
Karur.
- 3.The Joint-I Sub Registrar,
Karaikudi,
Sivagangai District.

COPY TO

- 1.The Lakshmi Vilas Bank Ltd.,
by its Authorized Officer
Vengamedu Branch
533, Salem Main Road
Vengamedu
Karur-639 006

2. 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.SUGUMAR.R.RAJULU, Advocate (SR-7612[F] dated 21/02/2020)

+1 CC to M/s.C.JAWAHAR RAVINDRAN, Advocate (SR-7668[F] dated 21/02/2020)

+1 CC to M/s.SPL.GP (SR-7797[F] dated 24/02/2020)

W.P. (MD) No.3344 of 2020

and

W.M.P. (MD) Nos.2802 & 2803 of 2020

21.02.2020

KG(CO)

TR(17.03.2020)4P 9C