



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

W.P(MD)No.4094 of 2020

and

W.M.P(MD)Nos.3459 & 3460 of 2020

VKN.Kalyanasundaram

... Petitioner

Vs.

1.The Branch Manager,
Indian Bank, Thillai Nagar Branch,
Trichy - 8.

2.The Authorized Officer,
Indian Bank, Thillai Nagar Branch,
Trichy.

3.VKN.Ayyappan @ VKN.Raja

4.VKN.Kannappan @ Narayanan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the public e-Auction notice issued by the first respondent dated 12.02.2020 and quash the same as illegal and consequently directing the first respondent to accept the proposal of the sale agreement made by the petitioner dated 05.02.2020 and realize the outstanding debt of the petitioner and reschedule the outstanding loan amount by the petitioner.

For Petitioner : Mr.S.Ram Sundar Vijay Raj
for M/s.Veera Associates

For RR 1 & 2 : Mr.Pandivel

ORDER

(Order of the Court was made 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 public e-Auction notice dated 12.02.2020 issued by the first respondent and to quash the same and consequently directing the first respondent to accept the proposal of the sale agreement made by the petitioner dated 05.02.2020 and realize the outstanding debt



of the petitioner and reschedule the outstanding loan amount.

2.The petitioner has filed the above Writ Petition under Article 226 of the Constitution of India challenging the E-auction sale notice dated 12.02.2020. When the petitioner has got remedy by way of an appeal available to him under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, the Writ Petition filed by him circumventing the alternate remedy cannot be entertained.

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.Since the petitioner has filed the Writ Petition without exhausting the alternative remedy, in view of the ratio laid down by the Hon'ble Supreme Court, we are not inclined to entertain the Writ Petition.

6.Accordingly, the Writ Petition is dismissed. However, it is open to the petitioner to challenge the sale notice dated 12.02.2020 before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1.The Branch Manager,
Indian Bank, Thillai Nagar Branch,
Trichy - 8.

2.The Authorized Officer,
Indian Bank, Thillai Nagar Branch,
Trichy.

+1 CC to M/s.VEERA ASSOCIATES, (SR-8801[F] dated 27/02/2020)

+1 CC to M/s.R.PANDIVEL, Advocate (SR-9449[F] dated 02/03/2020)

W.P (MD) No. 4094 of 2020
27.02.2020

JMN(13.03.2020) 3P : 5C