



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P (MD) No.3860 of 2021

and

W.M.P (MD) Nos.3094, 3095 and 8762 of 2021

M/s Sunaichandran Spintex (P) Ltd.,
D.No.55 Y/1B, Naidu South Street,
Chettiarpatti-626 122,
Rajapalayam Taluk,
Virudhunagar District,
represented by its Director
T.Jeyakumar.

... Petitioner

Vs.

The Authorized Officer,
Tamil Nadu Industrial Investment
Corporation Ltd., (TIIC),
No.98c4, 2nd floor,
Chairman Shanmugan nadar road,
Sivakasi-626, 123.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for all the records relating to the sale notice dated 13.01.2021 issued by the respondent and quash the same.

For Petitioner : Mr.V.Meenakshi Sundaram
for Mr.R.Niresh Kumar

For Respondent : Mr.S.Suresh
for M/s Aiyar & Dolia



ORDER

(Order of the Court was made by **M. DURAISWAMY, J.**)

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari calling for all the records relating to the sale notice dated 13.01.2021 and quash the same.

2. The petitioner, who is the borrower, has filed the above Writ Petition directly under Article 226 of the Constitution of India without exhausting the alternate remedy available to them under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal. The Honourable Supreme Court in the following judgments held that the writ petition filed by the aggrieved party challenging the proceedings initiated under the SARFAESI Act, is not maintainable.

3. In **Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.**, reported in (2018) 3 SCC 85, wherein the Hon'ble Supreme Court held as follows:-

"16.The Writ Petition ought to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the appellant to contest the maintainability of the Writ Petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter-affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference.

17.We cannot help but disapprove the approach of the High Court for reasons already noticed in *Dwarikesh Sugar Industries Limited Vs. Prem Heavy Engineering Works (P) Limited* 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".



4. In **ICICI Bank Limited and others v. Umakanta Mohapatra and others** reported in (2019) 13 SCC 497, wherein the Hon'ble Supreme Court held as follows:-

"2.Despite several judgments of this Court, including a Judgment by Hon'ble Navin Sinha, J., as recently on 30.01.2018 in State Bank of Travancore V. Mathew K.C (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under the 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).

3.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:-

"17.We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Limited Vs. Prem Heavy Engineering Works (P) Limited 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".

4.The Writ Petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside.

5.The appeals are allowed in the aforesaid terms. Pending applications, if any, shall stand disposed of."

5. In the case on hand, the petitioner has filed the Writ Petition without exhausting the alternate remedy available to them under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal.

6. In view of the same, following the ratio laid down by the Honourable Supreme Court of India cited supra, the Writ Petition filed by the borrower challenging the sale notice is not maintainable. Accordingly, the Writ Petition is dismissed. No



costs. Consequently, the connected Miscellaneous Petitions are also dismissed. It is open to the petitioner to canvass the interim order passed by the Division Bench of this Court on 01.03.2021 at the time of presenting the appeal before the Debts Recovery Tribunal.

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Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar(CS)

SSL

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To
The Authorized Officer,
Tamil Nadu Industrial Investment
Corporation Ltd., (TIIC),
No.98c4, 2nd floor,
Chairman Shanmugan nadar road,
Sivakasi-626, 123.

+1 CC to M/s.M.SARAVANAKUMAR, Advocate (SR-31436[F] dated
06/10/2021)

**W.P(MD)No.3860 of 2021
06.10.2021**

MGJ(07.10.2021) 4P 3C