



WEB COPY

W.P(MD)No.13323 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P(MD)No.13323 of 2021

and

W.M.P(MD)Nos.10304 & 10305 of 2021

B.Indira

... Petitioner

Vs.

1.The Authorized Officer,
Tamil Nadu Mercantile Bank Limited,
Tiruchirappalli Regional Office
(for Pattukottai Region),
No.18, PL.A. Kanagu Towers,
11th Cross,
Second Floor,
Thillai Nagar,
Tiruchirappalli - 620 018.

2.The Branch Manager,
Tamil Nadu Mercantile Bank Limited,
No.72, Sundararaj Chettiyar Complex,
South Kalamman Kovil Street,
Pattukkottai - 614 601,
Thanjavur District.

3.The Manager,
United India Insurance Company Limited,
Divisional Office Tuticorin,
No.457, Victori Extension Road,
Tuticorin - 628 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned possession notice dated 16.06.2021 issued by the first respondent, quash the same.

For Petitioner : Ms.C.Kayalvizhi

For Respondents : Mr.N.Dilip Kumar
Standing Counsel



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, to call for the records relating to the impugned possession notice, dated 16.06.2021 issued by the first respondent and to quash the same.

2.The petitioner is challenging the possession notice, dated 16.06.2021 issued under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). When the petitioner has got alternate remedy by way of an appeal under Section 17 of the SARFAESI Act, the Writ Petition filed by her challenging the possession notice cannot be entertained.

3.The Hon'ble Supreme Court in the following Judgments categorically held that the remedy open to a party challenging the proceedings initiated under the SARFAESI Act is only by way of an appeal under Section 17 of the SARFAESI Act.

4.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

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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".

5. 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."



6. In view of the availability of the alternate remedy, the Writ Petition filed by the petitioner challenging the possession notice, dated 16.06.2021, cannot be entertained. Accordingly, following the ratio laid down by the Hon'ble Supreme Court in the Judgments cited supra, the Writ Petition is liable to be dismissed, accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar(CS)

ps

Note :

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+1 CC to M/s.DILIPKUMAR, Advocate (SR-25221[F] dated 04/08/2021)

+2 CC to M/s.C.KAYALVIZHI, Advocate (SR-25302[F] dated 05/08/2021)

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