



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.17927 of 2021

and

W.M.P(MD)Nos.14797 and 14798 of 2021

R.Sivakumar

... Petitioner

Vs.

1.The Chief Judicial Magistrate,
Madurai,
Madurai District.

2.M/s. IDFC First Bank Ltd.,
represented by its Authorized Officer,
C.Kannan,
S/o L.Chandramani,
No.79/2, 1st Floor,
Rajabarley Complex,
Bye-pass Road,
Near Rathina Hospital,
Madurai.

... 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 impugned order passed by the first respondent in Cr.M.P.NO.716 of 2020, dated 28.07.2021 and quash the same as illegal, arbitrary and consequently direct the second respondent not to take any further action based on the impugned order.

For Petitioner

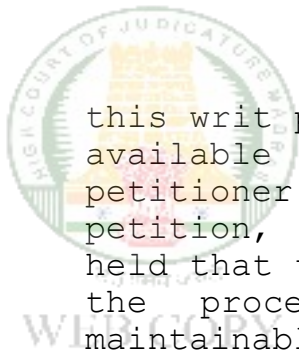
: Mr.P.Krishnasamy

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 impugned order, passed by the first respondent in Cr.M.P.NO.716 of 2020, dated 28.07.2021 and quash the same and consequently direct the second respondent not to take any further action based on the impugned order.

2. The petitioner has challenged the order passed under Section 14 of the SAREESI Act by the Chief Judicial Magistrate Madurai, in



this writ petition. When the petitioner has got an alternate remedy available to him under Section 17 of the SARFAESI Act, the petitioner without exhausting the same, for filing the above writ petition, 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 view of the ratio laid down by the Honourable Supreme Court in the above referred judgments, we are of the considered view that the writ petition filed by the petitioner is not maintainable. Accordingly, the Writ Petition is dismissed. However, it is open to the petitioner to challenge the order passed by the Chief Judicial Magistrate, Madurai before the Debts Recovery Tribunal in accordance with law. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

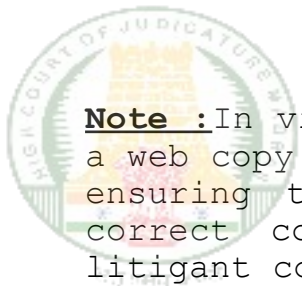
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Sub Assistant Registrar(CS)

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To

The Chief Judicial Magistrate,
Madurai, Madurai District.

W.P (MD) No.17927 of 2021
01.10.2021

DJ(CO)
KB(11.10.2021) 4P 2C