



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2022

CORAM :

THE HON'BLE MR. JUSTICE M. DURAISWAMY
AND

THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

W.P. No.2649 of 2022

and

W.M.P. Nos.2805 & 2806 of 2022

1. M. Bharath

2. Mrs. M.Jothimani

.. Petitioners

v.

1. The District Collector,
The District Magistrate,
Tirupur District, Tirupur.

2. The Revenue Divisional Officer,
Tirupur, Collectorate Building,
Tirupur District.

3. The Authorized Officer,
Canara Bank,
No.166, ARM Branch,
Thiruvenkatasamy Road West,
Coimbatore - 641 002.

4. R. Sundaresh

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus after calling for the records of the 1st respondent pertaining to his proceedings REF No.16116/2021/C3 and quash the order dated 19.01.2022 and consequently direct the 3rd respondent to approve an OTS Scheme to facilitate the petitioners to repay the loan amount.

For Petitioners : Mr.R. Sivakumar

For Respondents : Mr. R.U. Dinesh Rajkumar,
Addl. Govt. Pleader - R1 & R2

Mr. V. Kathirvelu - R3



O R D E R

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

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The petitioners have filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent pertaining to the proceedings dated 19.01.2022, to quash the same and consequently directing the 3rd respondent to approve the OTS Scheme to facilitate the petitioners to repay the loan amount.

2. The petitioners have challenged the order passed by the 1st respondent under section 14 of the SARFAESI Act, without exhausting the alternative remedy available to them under section 17 of the SARFAESI Act.

3.1. The Hon'ble Supreme Court of India, in the judgments reported in 2018 (3) Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.], and 2018 (1) Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others] 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.

3.2 In a decision of the Hon'ble Supreme Court dated 05.10.2018 in ICICI Bank Limited v. Umakanta Mohapatra, Civil Appeal Nos.10251 - 10265 of 2018 arising out of SLP (C) Nos.16758 - 16772 of 2015, the Supreme Court has referred to the decision in Authorized Officer, State Bank of Travancore and Anr. vs. Mathew K.C., (2018) 3 SCC 85 and has observed that despite several judgments, including the decision of Mathew K.C., supra, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI') and keep granting interim orders in favour of persons who are Non-Performing Assets. Further, the Apex Court 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.

4. The ratio laid down by the Hon'ble Apex Court in the above referred judgments is applicable to the present case.

5. Since the petitioners have filed the Writ Petition without exhausting the alternate remedy available to them under section 17 of the SARFAESI Act, we are not inclined to



entertain the Writ Petition. Accordingly, the Writ Petition is dismissed. However, it is open to the petitioners to challenge the impugned under section 17 of the SARFAESI Act, in accordance with law. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Rj

Note : Registry is directed to return the original impugned order to the learned counsel for the petitioner
To

1. The District Collector,
The District Magistrate,
Tirupur District, Tirupur.
2. The Revenue Divisional Officer,
Tirupur, Collectorate Building,
Tirupur District.
3. The Authorized Officer,
Canara Bank,
No.166, ARM Branch,
Thiruvengkatasamy Road West,
Coimbatore - 641 002.

Copy to:
The Section Officer,
E.R.Section,
High Court, Madras. (15/03/2022)

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.10642

+1cc to Mr.V.Kadhirvel, Advocate, S.R.No.10500

+1cc to the Government Pleader, S.R.No.11536

W.P. No.2649 of 2022
and

W.M.P. Nos.2805 & 2806 of 2022

AK (CO)
SU(09/03/2022)