



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM :

THE HON'BLE MR.JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

W.P.NOS.2936 & 2940 OF 2022
AND
W.M.P.NOS.3082, 3083, 3085, 3087 & 3088 OF 2022

1. M.Sangeetha

2. A.S.Manickavasagam

... Petitioners in
W.P.No.2936 of 2022

M.Sangeetha

... Petitioner in
W.P.No.2940 of 2022

.Vs.

The Authorized Officer,
Union Bank of India,
Regional Office,
1087, D.Krishna Towers,
3rd Floor, Lakshmi Mills Junction,
Avinashi Road,
Coimbatore - 641 037.

... Respondent in
both W.Ps

PRAYER IN W.P.NO.2936 OF 2022:-

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records culminated in the impugned order in Crl.M.P.No.15233 of 2021 dated 10.08.2021 and to quash the same and consequently direct the respondent bank to consider petitioner's representation dated 10.08.2020 to dispose of the same on merits.

PRAYER IN W.P.NO.2940 OF 2022:-

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records culminated in the impugned order in



Crl.M.P.No.25694 of 2021 dated 10.12.2021 and to quash the same and consequently direct the respondent bank to consider petitioner's representation dated 10.08.2020 to dispose of the same on merits.

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For Petitioners : Mr.J.Prakasam
(in both W.Ps)

For Respondent : Mr.V.Kadhirvelu
(in both W.Ps)

C O M M O N O R D E R

(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

The petitioners have filed the above Writ Petitions to issue Writs of Certiorarified Mandamus to call for the records pertaining to the impugned orders passed in Crl.M.P.No.15233 of 2021 dated 10.08.2021 and Crl.M.P.No.25694 of 2021 dated 10.12.2021 filed under Section 14 of the Securitisation & Reconstruction of Financial Asset & Enforcement of Security Interest Act, 2002 (in short 'SARFAESI').

2. As against the order passed by the Chief Judicial Magistrate, in an application under Section 14 of the SARFAESI Act, the aggrieved party has remedy before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

3. The Hon'ble Supreme Court in 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 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 the decision of the Supreme Court in ICICI Bank Limited v. Umakanta Mohapatra, reported in 2018 SCC Online SC 2349, the Supreme Court has referred to the decision in Mathew K.C. case, referred supra, and has observed that despite several judgments, including the decision of Mathew K.C., cited 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 Supreme 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.

5. In the said judgments, the Apex Court held that a Writ Petition filed by an aggrieved party as against the proceedings initiated under the SARFAESI Act is not maintainable when the petitioner has got remedy by way of an appeal available to them under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal. Following the ratio laid down by the Hon'ble Supreme Court in the above referred judgments, we are not inclined to entertain the Writ Petitions. Accordingly, the Writ Petitions are dismissed. However, it is open to the petitioners to challenge the orders passed in Crl.M.P.No.15233 of 2021 dated 10.08.2021 and Crl.M.P.No.25694 of 2021 dated 10.12.2021 before the Debt Recovery Tribunal in accordance with law, raising all the grounds available to them. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Authorized Officer,
Union Bank of India,
Regional Office,
1087, D.Krishna Towers,
3rd Floor, Lakshmi Mills Junction,
Avinashi Road,
Coimbatore - 641 037.

+2ccs to Mr.J.Prakasam, Advocate, S.R.Nos.10677 & 10678

W.P.NOS.2936 & 2940 OF 2022 AND
W.M.P.NOS.3082, 3083, 3085,
3087 & 3088 OF 2022

MT (CO)
PBS/15/03/2022