



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2022

CORAM :

THE HON'BLE MR. JUSTICE M. DURAISWAMY
AND

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

W.P. No.8870 of 2022 and
W.M.P.Nos. 8705 & 8706 of 2022

M/s. Dark Tex,
Represented by its Partner,
Shri S.K. Thangamuthu, S/o. Kaithamalai
4/58 Nadupatti Po., Vijayamangalam,
Avinashi Tk., Tirupur - 638 056. .. Petitioner

v.

1. The Authorized Officer,
Karnataka Bank Limited,
Asset Recovery Management Branch,
No.324, Ground Floor,
Thambu Chetty Street, Chennai.

2. Mrs. Muthusamy Priyadharshini .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of declaration, declaring the act of the 1st respondent in issuing the E-Auction sale notice dated 12.05.2021, conducting the sale on 06.07.2021, confirming the sale on 09.07.2021, issuing sale certificate if any, taking possession of the immovable property through order of the Chief Judicial Magistrate in Crl.M.P.No.836 of 2021, dated 15.12.2021 without considering the petitioner offer for repayment of dues due to the bank vide letters dated 20.02.2021, 08.03.2021 are all unconstitutional, illegal, done by abuse of process of law arbitrary, done in violation of Section 13(8) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 read with Article 300-A of the Constitution of India, null and void, consequently direct the respondents to restore the possession and title with respect to the immovable properties described in the E-Auction sale notice dated 12.05.2021 of the 1st respondent by accepting the amount and other charges payable by the petitioner that may be determined by this court.



For Petitioner : Mr.R.Selvakumar

O R D E R

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

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The petitioner has filed the above Writ Petition to issue a Writ of declaration, declaring the act of the 1st respondent in issuing the E-Auction sale notice dated 12.05.2021, conducting the sale on 06.07.2021, confirming the sale on 09.07.2021, issuing sale certificate, taking possession of the immovable property through order of the Chief Judicial Magistrate in Crl.M.P.No.836 of 2021, dated 15.12.2021 without considering the petitioner's offer for repayment of dues to the bank vide letters dated 20.02.2021, 08.03.2021 are all unconstitutional, illegal, done by abuse of process of law, arbitrary, done in violation of Section 13(8) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 read with Article 300-A of the Constitution of India, null and void, consequently directing the respondents to restore the possession and title with respect to the immovable properties described in the E-Auction sale notice dated 12.05.2021 of the 1st respondent by accepting the amount and other charges payable by the petitioner that may be determined by this court.

2. The petitioner has challenged the E-Auction sale notice dated 12.05.2021, the sale conducted on 06.07.2021, the confirmation of sale on 09.07.2021 and the order of the Chief Judicial Magistrate under section 14 of the SARFAESI Act in the above Writ Petition.

3. It is settled law that remedy open to the aggrieved party is only to file an appeal under section 17 of the SARFAESI Act before the Debts Recovery Tribunal. In the case on hand, the petitioner without exhausting the alternative remedy available to him under section 17 of the SARFAESI Act has filed the above writ petition under Article 226 of the Constitution of India.

4.1. 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.



4.2 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.

5. Since the petitioner has filed the Writ Petition without exhausting the alternate remedy available to him 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 petitioner to challenge the impugned order under section 17 of the SARFAESI Act, in accordance with law. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

Rj

To
The Authorized Officer,
Karnataka Bank Limited,
Asset Recovery Management Branch,
No.324, Ground Floor,
Thambu Chetty Street,
Chennai

+1cc to Mr.R.Selvakumar, Advocate, Sr.No.25592(06/06/2022)

W.P. No.8870 of 2022 and
W.M.P.Nos. 8705 & 8706 of 2022

NRL (CO)
GMY (13/04/2022)