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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY
AND

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

W.P. No.10101 of 2022

and

W.M.P. Nos.9792 & 9794 of 2022

C. Nirmala

.. Petitioner

v.

1. The Authorised Officer,
Canara Bank,
No.114, Chamundi Street,
Gugai, Salem - 636 006.

2.C. Manoharan

3.R. Thiagarajau

4.R.Sivaraj

5.R.Kotteswaran

6. The Sub Registrar,
SRO, Errumaipatti,
Namakkal District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent pertaining to the Sale Certificate dated 10.02.2022 registered as Doc.No.309/2022 at SRO, Errumaipatti, Namakkal and quash the same and consequently direct the 6th respondent to cancel the Registration of the Sale Certificate dated 10.02.2022, executed by the 1st respondent in favour of the 3rd to 5th respondents.

For Petitioner : Mr. P.S. Ganesan
for Ms. Radhika Boopathi



O R D E R
(Order of the Court made by M.DURAI SWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari Mandamus to call for the records of the 1st respondent pertaining to the Sale Certificate dated 10.02.2022 registered as Doc.No.309/2022 at SRO, Erumaipatti, Namakkal, to quash the same and consequently directing the 6th respondent to cancel the Registration of the Sale Certificate dated 10.02.2022, executed by the 1st respondent in favour of the respondents 3 to 5.

2. The petitioner has filed the Writ Petition challenging the sale certificate issued under the provisions of the SARFAESI Act, without exhausting the alternative remedy available to him under section 17 of the SARFAESI Act.

3. The Hon'ble Supreme Court, in the following judgments held that remedy open to the aggrieved party in respect of the proceedings initiated under the SARFAESI Act is to file an appeal under section 17 of the SARFAESI Act and not under Article 226 of the Constitution of India. Further, the Hon'ble Supreme Court of India held that Writ Petition filed under Article 226 of the Constitution of India under the SARFAESI Act is not maintainable.

(i) 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.

(ii) 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



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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 petitioner has filed the Writ Petition without exhausting the alternate remedy available to him under section 17 of the SARFAESI Act, following the ratio laid down by the Hon'ble Supreme Court, in the above referred judgments, the Writ Petition is not maintainable. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

True Copy//

Sub Assistant Registrar

Rj
To

1. The Authorised Officer,
Canara Bank,
No.114, Chamundi Street,
Gugai, Salem - 636 006.

2. The Sub Registrar,
SRO, Errumaipatti,
Namakkal District.

+1cc to Ms. Radhika Boopathi, Advocate, S.R.No.28569

W.P. No.10101 of 2022

and

W.M.P. Nos.9792 & 9794 of 2022

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NSK 05/05/2022