



W.P. No18241 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2022

CORAM:

**THE HON'BLE MR. JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MR. JUSTICE SUNDER MOHAN**

**W.P. No18241 of 2022
and W.M.P. No.17588 of 2022**

A.Vijayakumar

.. Petitioner

v.

1. The District Collector,
Namakkal,
Namakkal District.

2. The Federal Bank Limited,
Represented by its Chief Manager/Authorized Officer,
Karuveppampatti Branch,
MGR Nagar, Sankari,
Thiruchengodu Highway,
Karuveppampatti,
Namakkal – 637 304.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari, calling for the records of the
1st respondent in Roc.No.30360/2017-M4, dated 26.06.2019 under the



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Securitization and Reconstruction of Financial Assets and Enforcement
of Security Interest Act, 2002 [SARFAESI Act] and quash the same.

For Petitioner : Mr. T. Perinbanathan

For Respondents :Mr. P.Muthukumar,
State Government Pleader – R1

Mr. KMC. Arunmohan
for Mr.S.Sathyanarayanan - R2

ORDER

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

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari to call for the records of the 1st respondent dated 26.06.2019 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act] and quash the same.

2. The petitioner has challenged the order passed by the District Collector, Namakkal, dated 26.06.2019 under section 14 of the



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SARFAESI Act. Admittedly, the petitioner is a borrower and has challenged the order passed by the 1st respondent after a lapse of three years. The petitioner has not explained the reason for laches in the affidavit filed in support of the Writ Petition. That apart, when the petitioner has got remedy by way of filing an appeal under section 17 of the SARFAESI Act, the Writ Petition filed under Article 226 of the Constitution of India is not maintainable.

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 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)**



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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 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



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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 is closed.

[M.D., J.] [S.M., J.]
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