



W.P.No.21979 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

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P.MADASAMY
PROPRIETOR
DEEPAM ENGINEERING COMPANY
OLD NO.560, NEW NO. 268
M.T.H. ROAD, AMBATTUR INDUSTRIAL ESTATE
NEAR TELEPHONE EXCHANGE
CHENNAI – 600 009.

.. Petitioner

Vs

THE TAMILNADU INDUSTRIAL INVESTMENT
CORPORATION LTD.
(A GOVT. OF TAMIL NADU UNDERTAKING)
CHENNAI BRANCH (GROUND FLOOR)
NO.692, ANNA SALAI, NANDANAM
CHENNAI – 600 035
REP. BY ITS ADMINISTRATIVE OFFICER.

.. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of declaration declaring that the respondent is not a secured creditor within the meaning of the SARFAESI Act 2002 and the Rules thereunder as the respondent has not registered the secured debt pertaining to the petitioner's



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property situate at Plot No.28C, Sri Iyyappa Nagar Main Road, comprised in Survey Nos.1239/1, 1239/2, 1239/3 and 1374/3, Ponnammanmedu, Chennai – 600 110, Madhavaram Village, Ambattur Taluk, Tiruvallur District admeasuring 600 Sq.ft without following the due procedure as required under Section 26-D of Chapter IV -A of the Amending Act of 2016 of SARFAESI Act, 2002 with the Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI).

For the Petitioner : Mr.R.Abdul Mubeen
For the Respondent : Mr.P.T.Rakesh

ORDER

(Order of the court was made by the Hon'ble Chief Justice)

We have heard Mr.R.Abdul Mubeen, learned counsel for the petitioner, and Mr.P.T.Rakesh, learned counsel for the respondent.

2. Learned counsel for the petitioner submits that the respondent has not registered the security as is contemplated and mandated under Section 26-D of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In the absence of the registration of the said security as contemplated under Section 26-D of the SARFAESI Act, the respondent does not have any right or authority to enforce the



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security under the provisions of the SARFAESI Act.
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3. As the respondent has no authority to invoke the provisions of the SARFAESI Act in the absence of registration of the security as is mandated under Section 26-D of the SARFAESI Act, the petitioner has filed the present writ petition. Reliance is placed by learned counsel for the petitioner on the judgment of the Full Bench of the Bombay High Court in the case of *Jalgaon Janta Sahakari Bank Ltd and another v. Joint Commissioner of Sales Tax, 2022 (5) Mh.L.J. 691*, and also on the judgment of a learned Single Judge of the Gauhati High Court in the case of *Goverdhan Prasad Atal v. Assam Gramin Vikash Bank and others, AIR 2021 Gau 47*.

4. The petitioner has already challenged the action under Section 13(4) of the SARFAESI Act by filing a securitisation application. The same was rejected. Aggrieved thereby, the petitioner has filed an appeal before the Debt Recovery Appellate Tribunal and the same is pending. The petitioner can raise all the defences before the Debt Recovery Appellate Tribunal.



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5. It is trite that the petitioner cannot adopt two remedies for the same purpose. As the appeal filed by the petitioner is already pending with the Debt Recovery Appellate Tribunal, it would be inappropriate to entertain a parallel proceeding before this court.

6. With the observation that the petitioner can raise all the possible defences in the pending appeal before the Debt Recovery Appellate Tribunal, the writ petition is disposed of. The Debt Recovery Appellate Tribunal may consider to dispose of the appeal expeditiously. There will be no order as to costs. Consequently, W.M.P.No.21352 of 2023 is closed.

(S.V.G., CJ.)

(P.D.A., J.)

25.07.2023

Index : Yes/No
Neutral Citation : Yes/No
sasi



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To:
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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU,J.

(sasi)

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