



W.P.No.21799 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2024

CORAM :

THE HON'BLE MR.D.KRISHNAKUMAR, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

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Ramesh

.. Petitioner

VS

Authorised Officer,
State Bank of India,
SME Branch,
Villupuram,
Villupuram District.

.. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records and quash the possession notice dated 13.5.2024 issued by the respondent and direct the respondent to abandon the proceedings initiated under SARFAESI Act till the pending disposal of the I.P.No.10 of 2023 on the file of the Principal District Judge, Pondicherry.

For the Petitioner : Ms.S.Suseela Devi



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ORDER

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

Questioning the legality of the possession notice dated 13.5.2024 issued by the respondent/bank under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for brevity, "*the SARFAESI Act*"], the petitioner, who is a borrower, has filed this writ petition.

2. Learned counsel for the petitioner submitted that due to financial crunch the petitioner was not in a position to pay the dues to the respondent/bank. She further submitted that the petitioner had already filed an insolvency petition in I.P.No.10 of 2023 on the file of the Principal District Judge, Pondicherry, to declare him as an insolvent and the same is pending as on date and without considering the said aspect the respondent/bank had invoked the provisions of the SARFAESI Act and issued the impugned notice.



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3. It is beyond any cavil that as against the possession notice, which is impugned in this writ petition, the petitioner has an efficacious alternative remedy to prefer an appeal before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

4. The Supreme Court in the case of *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.

5. 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.*, supra, the High Courts continue to entertain matters which arise under the SARFAESI Act and keep granting interim orders in favour



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of persons whose accounts are declared as 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 is not maintainable.

6. In *Phoenix ARC Private Limited v. Vishwa Bharati Vidya Mandir and others*, (2022) 5 SCC 345, after taking note of various earlier decisions, the Apex Court held that writ petitions at the instance of borrowers against the proposed action to be taken under Section 13(4) of the SARFAESI Act, 2002 is an abuse of process of the Court in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act. It was further held that under such situation the High Court ought not to have entertained the writ petitions. The relevant portion of the said decision reads thus:

"10. In *Union Bank of India v. Satyawati Tandon*, (2010) 8 SCC 110, it was observed and held by this Court that the remedies available to an aggrieved person against the action taken under Section 13(4) or Section 14 of the



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SARFAESI Act, by way of appeal under Section 17, can be said to be both expeditious and effective.

...

12. In the case of Kanaiyalal Lalchand Sachdev v. State of Maharashtra, (2011) 2 SCC 782, after referring to the earlier decisions of this Court in the cases of Sadhana Lodh Vs. National Insurance Co. Ltd. and Anr., (2003) 3 SCC 524; Surya Dev Rai Vs. Ram Chander Rai and Ors., (2003) 6 SCC 675 and State Bank of India Vs. Allied Chemical Laboratories and Anr., (2006) 9 SCC 252 while upholding the order passed by the High Court dismissing the writ petition on the ground that an efficacious remedy is available under Section 17 of the SARFAESI Act, it was observed that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person."

[emphasis supplied]

7. Very recently, the Apex Court in the case of *South Indian Bank Ltd and others v. Naveen Mathew Philip and another*,



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MANU/SC/0400/2023, deprecated the practice adopted by the High Courts whereby the writ petitions are being entertained as against proceedings initiated by the secured creditor under SARFAESI Act and further held that when the statute prescribes a particular mode, an attempt to circumvent should not be encouraged by the writ Court.

8. In such view of the matter, we are not inclined to interfere with the impugned possession notice and the petitioner is relegated to the remedy of preferring appeal against the said notice.

The writ petition is, accordingly, dismissed. There shall be no order as to costs. Consequently, W.M.P.No.23788 of 2024 is closed.

(D.K.K., ACJ.) (P.B.B, J.)
05.08.2024

Index : Yes/No
NC : Yes/No
sasi



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To:

The Authorised Officer,
State Bank of India,
SME Branch,
Villupuram,
Villupuram District.



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THE HON'BLE ACTING CHIEF JUSTICE
AND
P.B.BALAJI, J.

(sasi)

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