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W.P.No.21015 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2024

CORAM :

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

AND

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

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RAMKUMAR, PROPRIETOR
SHRI RAGHURAM ENTERPRISES,
NO.72, PETTAIYAN CHATRAM,
VAZHUDAVUR ROAD, THATTANCHAVADI,
PONDICHERRY-605 009.

.. Petitioner

Vs

1. PUNJAB AND SIND BANK
(A GOVERNMENT OF INDIA UNDERTAKING)
ZONAL OFFICE, NO.770-A, FIRST FLOOR,
SPENCER TOWER, ANNA SALAI,
CHENNAI-600 002

2. THE AUTHORISED OFFICER
PUNJAB AND SIND BANK,
NO.66, ANNA SALAI,
PUDUCHERRY-605 001.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records of the 2nd respondent in E-auction Sale notice for sale of immovable property dated 2.7.2024 and quash the same.



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For the Petitioner : Mr.L.Murali Krishnan

For the Respondents : Mr.M.Sridhar

ORDER

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

Assailing the e-auction sale notice dated 2.7.2024, the petitioner, who is a borrower, has filed this writ petition.

2. On the basis of the submission of learned counsel for the petitioner that the auction notice does not reveal issuance of notice giving 30 days time to the borrower to redeem the property, this court, vide order dated 26.7.2024, had granted an order of interim stay.

3. When the matter was taken up for hearing today, learned counsel for the respondents, on the basis of the counter affidavit filed, submitted that the e-auction notice dated 2.7.2024 was despatched on 5.7.2024 and the same was served on the petitioner on 6.7.2024. The e-auction is scheduled on 9.8.2024



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and, therefore, 30 days time has been given to the borrower to redeem the property. He prayed for dismissal of the writ petition.

4. Learned counsel for the petitioner strongly refuted the aforesaid submission made by learned counsel for the respondents and prayed for sympathetic consideration of the plea of the petitioner that the default in repayment was owing to the Covid-19 pandemic.

5. It is beyond any cavil that as against the e-auction sale 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

6. The Supreme Court in the case of *The Authorized Officer,*



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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 proceedings initiated under the SARFAESI Act directly by filing a writ petition under Article 226 of the Constitution of India without exhausting the appeal remedy available to them.

7. 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 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



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maintainable.

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

9. In such view of the matter, we are not inclined to interfere with the impugned e-auction sale notice and the petitioner is relegated to the remedy of preferring appeal against the said notice.

10. The writ petition is, accordingly, dismissed. There shall be no order as to costs. Consequently, W.M.P.No.22973 of 2024



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is closed.
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11. The Registry is directed to return the original documents, if any filed along with the writ petition, to learned counsel for the petitioner, after substituting the same with the photocopies.

(D.K.K., ACJ.) (P.B.B, J.)
06.08.2024

Index : Yes/No
NC : Yes/No

Note to Registry:
Issue order copy today (6.8.2024)

sasi

To:

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(A GOVERNMENT OF INDIA UNDERTAKING)
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THE HON'BLE ACTING CHIEF JUSTICE
AND
P.B.BALAJI, J.

(sasi)

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