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W.P.No.23580 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2024

CORAM :

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

AND

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

W.P.No.23580 of 2024

M/s Hi-Esteem Auto Komponenten Private Ltd.,
Rep. by its Director Mr.J.Nithashanb,
No.88/1 & 88/2, Mettupalayam Road,
Panruti Village, Sriperumpudur,
Kancheepuram 631 604.

.. Petitioner

Vs

1. The Authorized Officer,
Bank of Maharashtra, Chennai Zonal Office,
New No.25 & 27, Old No.43,
Akshaya Shanti, Anna Salai,
Chennai 600 002.

2. The Branch Manager, Bank of Maharashtra,
Tambaram Branch, No.28, Old No.75,
Anna Street, Chitlappakam, Tambaram,
Taluka Chilka, Revenue Firka,
Chennai 600 064.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records relating to the impugned notice under Section 13(2) of SARFAESI Act, 2002, dated 28.05.2024 issued by the first respondent and quash the same.

For the Petitioner : Mr.G.Vairavasubramanian

ORDER

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

Assailing the notice dated 28.05.2024 issued under Section 13(2) of the SARFAESI Act by the first respondent, the petitioner, who is a borrower, has filed this writ petition.

2. The petitioner, namely, M/s Hi Esteem Auto Komponenten Private Ltd., represented by its Director, has availed Cash credit facility from the second respondent to the tune of Rs.5,28,00,000/-, vide sanction letter dated 15.09.2023. Further, the petitioner company has availed various term loans under various schemes to purchase the machineries and to renovate the factory, and for obtaining the term loans, the petitioner provided six



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properties worth Rs.65 Crores, as collateral securities. According to the petitioner, they have been paying the EMIs to various loan accounts to the second respondent, and none of the loan accounts have become Non Performing Act. But, the first respondent has issued the impugned notice, informing that the said loans maintained in the second respondent's branch was classified as a non-performing Asset, and consequently, the second respondent froze the accounts of the petitioner.

3. For the above said impugned notice issued by the first respondent, the petitioner has sent a legal notice dated 06.07.2024, quoting all the irregularities of the first respondent and it was received by them on 09.07.2024. According to the petitioner, as per Section 13(3-A) of the SARFAESI Act, the deadline for sending reply by the first respondent to the legal notice is 24.07.2024. However, since there is no reply from the first respondent beyond the said date, this writ petition has been filed.



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4. Admittedly, the impugned notice was issued under the SARFAESI Act by the first respondent to the petitioner. For the said impugned notice, the petitioner has also sent a detailed reply by way of legal notice. As per the proviso to Section 13(3-A) of the said Act, the respondents shall consider the the objection/representation sent by the petitioner and if the same is not accepted by them, they have to communicate the same in writing to the petitioner, within fifteen days from the date of such receipt of the objection/representation. According to the petitioner, since there is no reply from the respondent, this writ petition has been filed. But, in our view, if no reply is given by the respondents, the remedy for the petitioner is only before the appropriate forum, as prescribed in the statute under the Act and not before the Court of Law by filing the writ petition.

5. At this juncture, it is worthwhile to refer that 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



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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.

6. Further, 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 maintainable.

7. 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,



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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 notice and the petitioner is relegated to approach the appropriate forum.

9. Accordingly, this writ petition is dismissed. There shall be no order as to costs. Consequently, W.M.P.No.25791 of 2024 is closed.

(D.K.K., ACJ.) (P.B.B, J.)
20.08.2024

Index : Yes/No
Internet : Yes/No
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